

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

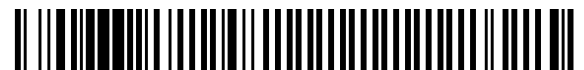
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| In re: |) | |
| |) | Chapter 11 |
| SOUTHCROSS ENERGY PARTNERS, L.P., <i>et al.</i> , |) | |
| |) | Case No. 19-10702 (MFW) |
| Debtors. ¹ |) | |
| |) | (Joint Administration Requested) |

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS,
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507,
(I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED
SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE
USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION,
(V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING,
AND (VII) GRANTING RELATED RELIEF**

Southcross Energy Partners, L.P. (“**Southcross**” or the “**Borrower**”),² Southcross Energy Partners GP, LLC (“**Southcross GP**”), and Southcross’s wholly-owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3),

¹ The debtors and debtors in possession in these Chapter 11 Cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5200, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms further below in this Motion, the DIP Documents, or the Interim Order, as applicable (as such terms are defined herein).



364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

In support of this Motion, the Debtors respectfully submit (a) the *Declaration of Avinash D’Souza in Support of Motion of Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief* (the “**D’Souza Declaration**”) attached hereto as Exhibit B and (b) the *Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**Howe Declaration**”), both filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

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

- (a) authorizing the Borrower to obtain, and the Borrower’s Debtor subsidiaries (collectively, in their capacity as such, the “**Guarantors**” and, together with the Borrower, the “**Loan Parties**”) to guaranty, debtor-in-possession credit financing in an aggregate principal amount of up to \$255 million (the “**DIP Financing**”) to be funded by certain of the Prepetition Term Lenders (in their capacity as lenders under the DIP Facilities, the “**DIP Lenders**”) under a secured term loan and letter of credit facility (the “**DIP Facility**”) consisting of (A) new money term loans (the “**DIP Term Loans**”) in an aggregate principal amount of up to \$72.5 million, (B)

letter of credit term loans (the “**DIP LC Loans**”) in an aggregate principal amount of up to \$55 million, the proceeds of which will be used to cash collateralize letters issued (or deemed issued) under a letter of credit sub-facility in an aggregate principal amount of up to \$55 million (the “**DIP L/C Sub-Facility**”) and (C) roll-up term loans (the “**DIP Roll-Up Loans**” and, together with the DIP Term Loans and the DIP LC Loans, the “**DIP Loans**”), which shall be subject and subordinate to the DIP Term Loans and DIP LC Loans, to refinance dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of \$127.5 million;

- (b) authorizing the Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Superpriority Secured Debtor-in-Possession Credit Agreement, among the Loan Parties, the DIP Lenders, certain Prepetition Revolving Lenders, as issuers of DIP Letters of Credit (the “**DIP L/C Issuers**”), and Wilmington Trust, National Association, as administrative and collateral agent (collectively, solely in such capacities, the “**DIP Agent**” and, together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached hereto as Exhibit A (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget (including any permitted variances), the “**DIP Documents**”) and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;
- (c) granting to the DIP Agent, for the benefit of the DIP Lenders, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the Carve-Out and the Permitted Senior Liens, to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;
- (d) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the Loan Parties’ estates and all proceeds thereof (other than Avoidance Actions, but, upon entry of the Final Order, including Avoidance Proceeds), subject to the Carve-Out and the Permitted Senior Liens;
- (e) authorizing the Loan Parties (A) upon entry of this Interim Order, to incur in a single draw on the Closing Date, DIP Term Loans in an aggregate principal amount of up to \$30 million (the “**Initial DIP Term Loans**”) and DIP LC Loans in an aggregate principal amount of up to \$55 million (the incurrence of such loans upon entry of this Interim Order, the “**Interim Financing**”) and (B) upon entry of the Final Order, to incur in a single draw on or within 30 days after the entry of the Final Order, DIP

Term Loans in an aggregate principal amount of \$42.5 million (the “**Delayed Draw DIP Loans**”), in each case subject to the terms and conditions set forth in the DIP Documents, this Interim Order, and the Final Order;

- (f) authorizing the Debtors (A) upon entry of this Interim Order, to use proceeds of the DIP LC Loans to cash collateralize (in the amount of 103% of the face amount) the DIP Letters of Credit and to deem the Prepetition the Letters of Credit to be cancelled and reissued under the DIP L/C Sub-Facility (the “**Prepetition L/C Refinancing**”) and (B) upon entry of the Final Order, to use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of \$127.5 million (the “**Prepetition Term Loan Refinancing**”) and, together with the Prepetition L/C Refinancing, the “**Prepetition Debt Refinancing**”);
- (g) authorizing the Debtors’ use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and other the DIP Documents, including the Approved Budget (subject to permitted variances);
- (h) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget and permitted variances thereunder) and all other Prepetition Collateral, and the granting of the Adequate Protection Obligations to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);
- (i) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral as set forth herein;
- (j) modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and Final Order; and
- (k) scheduling a final hearing (the “**Final Hearing**”), to be held within 30 days after the Petition Date, to consider entry of the Final Order approving the DIP Facilities and use of Cash Collateral, as set forth in the DIP Motion and the DIP Documents.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (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 February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that 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.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court commencing the Chapter 11 Cases. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in the Chapter 11 Cases.

7. Additional information about the Debtors’ businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the Howe Declaration, which is incorporated herein by reference.

Concise Summary of Terms of DIP Facilities

8. Under the disclosure requirements of Bankruptcy Rule 4001(b), (c), and (d) and Local Rule 4001-2(a)(i) and (ii), the following table concisely summarizes the significant terms of the DIP Facilities and the Interim Order:³

| Summary of Relevant Provisions | |
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| Bankruptcy Code/Local Rule | Summary of Material Terms |
| Borrower Bankruptcy Rule 4001(c)(1)(B) | Southcross Energy Partners, L.P. <i>See</i> DIP Credit Agreement, Introductory Paragraph |
| Guarantors Bankruptcy Rule 4001(c)(1)(B) | Each of Borrower's direct and indirect Debtor subsidiaries <i>See</i> DIP Credit Agreement § 1.02 (Definition of "Guarantors") |
| DIP Lenders Bankruptcy Rule 4001(c)(1)(B) | Certain Prepetition Term Lenders that are members of the Ad Hoc Group and any other Persons that have become party to the DIP Credit Agreement pursuant to an Assignment and Assumption <i>See</i> DIP Credit Agreement § 1.02 (Definition of "Lenders") |
| DIP Agent Bankruptcy Rule 4001(c)(1)(B) | Wilmington Trust, National Association <i>See</i> DIP Credit Agreement, Introductory Paragraph |
| Amount and Facility Bankruptcy Rule 4001(c)(1)(B) | A senior secured superpriority debtor-in-possession financing, consisting of (a) the DIP Term Loans and DIP LC Loans with commitments in an aggregate principal amount of up to \$127.5 million, including the DIP L/C Sub Facility in the aggregate principal amount of up to \$52,597,087.38, and (b) the DIP Roll-Up Loans, which shall be secured on a junior basis to the DIP Term Loans and DIP LC Loans, to refinance dollar-for-dollar Prepetition Term Loans in the aggregate amount of \$127.5 million. <i>See</i> DIP Credit Agreement § 1.02 (Definition of "Delayed Draw Term Commitment," "DIP LC Commitment" and "Initial Term Commitment" and §2.01) |
| Funding Use of Proceeds Bankruptcy Rule 4001(c)(1)(B) | Subject to the Approved Budget and Permitted Variances thereunder, in accordance with the DIP Documents, (a) working capital and general corporate purposes, including the Prepetition Debt Refinancing and the cash collateralization of letters of credit under the DIP L/C Sub-Facility, (b) to deem to be cancelled and reissue the Prepetition Letters of Credit, (c) the payment of fees, costs and expenses related to the DIP Facilities, (d) the payment of other administration costs incurred in connection with the Chapter 11 Cases, and (e) the funding of the Carve-Out. The proceeds of \$55 million in principal amount of DIP LC Loans shall be deposited into |

³ This summary, including the defined terms it uses (whether or not defined within the summary), is qualified in its entirety by the provisions of the DIP Documents and the Interim Order, as applicable. To the extent that there are any conflicts between this summary, on the one hand, and any DIP Document or the Interim Order, as applicable, on the other, the terms of such DIP Document or the Interim Order, as applicable, shall govern.

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| | <p>the Cash Collateral Accounts to cash collateralize letters of credit (the “DIP Letters of Credit”) (in the amount of 103% of the face amount of such letters of credit) to be issued or deemed issued (in the case of the Prepetition Letters of Credit) under the DIP L/C Sub-Facility; <i>provided</i> that an amount up to the “Alternate Cash Collateral Amount” (as defined in the DIP Credit Agreement) may be used to cash collateralize customer and/or supplier obligations of the Loan Parties in lieu of issuing DIP Letters of Credit.</p> <p>See DIP Credit Agreement § 8.21 (Use of Proceeds), §2.07(j)(iii)(B) (Cash Collateralization) and Interim Order ¶¶ 2, 5, 9</p> |
| Interest Rate Bankruptcy Rule 4001(c)(1)(B) | <p>DIP Loans will bear interest at the following rates:</p> <ul style="list-style-type: none"> (a) with respect to Eurodollar Loans, LIBO Rate (1.0% floor) plus 10.0% per annum, and (b) with respect to ABR Loans, the Alternative Base Rate plus 9.0% per annum; <i>provided</i> that DIP LC Loans may be borrowed only as ABR Loans. <p>Roll-Up Loans will bear interest at the Alternative Base Rate plus 5.25% .</p> <p>See DIP Credit Agreement §1.02 (Definition of “Applicable Margin”) and §3.02(a) (ABR Loans) and (b) (Eurodollar Loans)</p> |
| Default Interest Bankruptcy Rule 4001(c)(1)(B) | <p>2.0% per annum.</p> <p>See DIP Credit Agreement § 3.02(c) (Post-Default Rate)</p> |
| Maturity Bankruptcy Rule 4001(c)(1)(B) | <p>The date (the “Maturity Date”) means the date that is the earliest to occur of: (a) the date that is 6 months from the date of the Petition Date; <i>provided</i> that the Borrower will have the right to request one extension of up to ninety (90) days subject to the satisfaction of certain conditions, including the consent of the Required Lenders and the payment of an extension premium of 1.00% of the consenting Lender’s DIP Loans then outstanding; (b) the effective date of any confirmed Acceptable Plan or any other Chapter 11 Plan of the Loan Parties; (c) the date on which all or substantially all of the assets of the Loan Parties are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code and (d) the acceleration of the maturity of the Loans upon the occurrence of any Event of Default.</p> <p>See DIP Credit Agreement § 1.02 (Definitions of “Maturity Date” and “Scheduled Maturity Date” and 3.01)</p> |
| Fees Bankruptcy Rule 4001(c)(1)(B) | <p><u>Structuring Fee</u>: 100 bps of the aggregate principal amount of the Lender’s commitments in respect of the DIP Term Loans and DIP LC Loans, payable on the initial extension of credit (the “Closing”; the date on which the Closing occurs, the “Closing Date”) under the DIP Facility.</p> <p><u>Put Premium</u>: 100 bps of the aggregate principal amount of DIP Term Loans and DIP LC Loans that may be put to the signatories to the commitment letter, payable on the Closing Date to each DIP Lender that is a signatory to the commitment letter.</p> <p><u>OID</u>: 150 bps of the aggregate principal amount of the DIP Term Loans and DIP LC Loans, payable on the applicable funding date of such DIP Term Loans and DIP LC Loans.</p> <p><u>Letter of Credit Fronting Fees</u>: 0.50% of the stated amount of each new issued DIP Letter of Credit and 12.5% of each Prepetition Letter of Credit deemed issued under the DIP Facility, payable on the date of such issuance or deemed issuance. .</p> <p><u>Extension Fee</u>: 100 bps of the aggregate outstanding principal amount of DIP Loans, upon satisfaction of the conditions to the extension of the Scheduled Maturity Date, payable to each DIP Lender that consents to such extension.</p> <p><u>Exit Fee</u>: 150 bps of the aggregate principal amount of DIP Term Loans and DIP LC Loans and unused Delayed Draw DIP Commitments, payable on the Maturity Date or, if</p> |

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| | <p>the DIP Term Loans and DIP LC Loans are prepaid, on the date of such prepayment. See DIP Credit Agreement § 1.02 (Definition of "Scheduled Maturity Date") and §3.05.</p> |
| <p>Optional Prepayments Bankruptcy Rule 4001(c)(1)(B)</p> | <p>DIP Loans may be voluntarily repaid, in whole or in part, without premium or penalty (other than the payment of the Exit Fee), at any time. Once repaid, DIP Loans may not be reborrowed.</p> <p>See DIP Credit Agreement § 3.04 (Optional Prepayments)</p> |
| <p>Mandatory Prepayments Bankruptcy Rule 4001(c)(1)(B)</p> | <p>(a) 100% of net cash proceeds of non-ordinary course asset sales;</p> <p>(b) 100% of net cash proceeds of insurance and condemnation recoveries;</p> <p>(c) 100% of net cash proceeds of equity issuances or capital contributions;</p> <p>(d) 100% of net cash proceeds of issuance or incurrence of indebtedness (other than permitted indebtedness); and</p> <p>(e) 100% of net cash proceeds of Extraordinary Receipts.</p> <p>Subject to the Carve-Out and the Wind-Down Reserve, all proceeds of mandatory prepayments shall be used, <i>first</i>, ratably to pay the Exit Fee, if applicable, (ii) <i>second</i>, to be remitted by the Borrower to the DIP Agent and applied by the DIP Agent ratably to repay the DIP Term Loans then outstanding, (iii) <i>third</i>, to be remitted by the Borrower to each of the Prepetition Term Agent and the Prepetition Revolver Agent, to be used by such Prepetition Agent to pay any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis; and (iv) <i>thereafter</i>, to be remitted by the Borrower to the Prepetition Revolving Agent, the Prepetition Term Agent and the DIP Agent, in such amounts to ratably repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans).</p> <p>See DIP Credit Agreement § 3.04 (Mandatory Prepayments)</p> |
| <p>Security and Priority Bankruptcy Rule 4001(c)(1)(B)(i)</p> | <p>To secure the DIP Obligations, effective as of entry of the Interim Order, the DIP Agent, for the benefit of itself and the DIP Lenders, is granted valid, binding, continuing, enforceable, non-avoidable and automatically and properly perfected security interests in and liens on (collectively, the "DIP Liens") all property and interests in property and proceeds and products thereof now owned or hereafter acquired by any Debtor, including all such property and interest in or upon which a DIP Lien is granted or purported to be granted pursuant to any DIP Document (collectively, the "DIP Collateral"), subject in all cases to the Carve-Out as follows:</p> <p>(a) First-priority lien on all unencumbered assets;</p> <p>(b) First-priority priming lien on all Prepetition Collateral and DIP Collateral, subject and subordinate only to the Permitted Senior Liens, but senior in all respects to the collateral securing the Prepetition Term Loan Facility and Prepetition Revolver Facility ("Prepetition Liens") and the Adequate Protection Liens; <i>provided</i> that Roll-Up Loans will remain subject to the waterfall provisions of the Intercreditor Agreement such that proceeds of Shared Collateral shall be allocated ratably between Prepetition Revolving Debt, on the one hand, and Roll-Up Loans and Prepetition Term Debt, on the other hand, and any proceeds allocated on account of the Roll-Up Loans and Prepetition Term Debt shall be applied first to the repayment of Roll-Up Loans before any Prepetition Term Debt;</p> <p>(c) Junior-priority lien on all property and assets of the Loan Parties that are subject to (i) valid, perfected, and non-avoidable liens in existence immediately prior to the Petition Date (other than the Prepetition Liens), (ii) valid non-avoidable liens that are perfected subsequent to the Petition Date as permitted by section 546(b)</p> |

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| | <p>of the Bankruptcy Code (other than the Prepetition Liens), and (iii) the liens in favor of the DIP L/C Issuers in respect of the Cash Collateral Accounts, securing the Loan Parties' obligations under the DIP Letters of Credit (the liens described in the foregoing clause (i) through (iii), the "Permitted Senior Liens"), subject in the case of the liens described in the foregoing clause (i) or (ii), to the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and</p> <p>(d) Joint and several superpriority administrative expense claims, with priority over any and all administrative expense claims (the "DIP Superpriority Claims").</p> <p>All of the liens described above shall be effective and perfected upon entry of the Interim Order.</p> <p>In addition, notwithstanding the foregoing, until the cancellation, or cash collateralization of all outstanding DIP Letters of Credit and the termination of all commitments for DIP Letters of Credit, amounts on deposit in the account established to will secure (i) the Borrower's obligations in respect of the DIP Letters of Credit on a senior basis and (ii) the other obligations of the Borrower and the Guarantors under the DIP Facilities on a junior basis for the DIP Secured Parties.</p> <p>See Interim Order ¶¶7, 8, 9, 16</p> |
| DIP Budget and Related Covenants Bankruptcy Rule 4001(c)(1)(B) | <p>The use of proceeds of the DIP Facilities is subject to a customary budget (the "Approved Budget"), subject to permitted variances (the "Permitted Variances").</p> <p>See DIP Credit Agreement § 8.01(q) (Approved Budget), § 9.01 ([Budget and Variance Test) and Interim Order ¶ 2(a)</p> |
| Reporting Bankruptcy Rule 4001(c)(1)(B) | <p>The DIP Credit Agreement requires compliance with certain periodic reporting covenants that are usual and customary for debtor-in-possession financings like the DIP Financing.</p> <p>See DIP Credit Agreement § 8.01 (Financial Statements, Ratings Change; Other Information) and Interim Order ¶ 14(e)</p> |
| Borrowing Conditions Bankruptcy Rule 4001(c)(1)(B) | <p>In addition to such other conditions precedent as may be agreed upon between the Debtors and DIP Lenders (collectively, the "Conditions Precedent"): </p> <ul style="list-style-type: none"> (a) The Petition Date has occurred; (b) Entry of interim or final orders approving the DIP Motion (as applicable); (c) Execution by Debtors of all agreements and documents evidencing the DIP Financing and the DIP Obligations (the "DIP Documents") required to be executed on the date thereof; (d) All fees, costs and expenses required to be have been paid or reimbursed, as set forth herein and in the DIP Documents and fee letters have been paid or reimbursed or will be paid or reimbursed contemporaneously with the Effective Date; (e) Delivery of an initial budget; (f) Satisfaction of representations and warranties; (g) Since December 31, 2018, no event, condition or circumstance has occurred that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and (h) Other customary and appropriate conditions precedent. <p>All "first day" orders must be reasonably acceptable to Required Lenders and the Prepetition Revolving Agent in form and substance.</p> <p>See DIP Credit Agreement Art. VI</p> |
| Stipulations as to | In the Interim Order, the Debtors stipulate to certain facts, including, among other things, |

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| Prepetition Claims and Liens Bankruptcy Rule 4001(c)(1)(B)(iii) | <p>that:</p> <ul style="list-style-type: none"> (a) As of the Petition Date, the Loan Parties were lawfully indebted and liable to the Prepetition Revolving Lenders under the Prepetition Revolving Facility Documents in respect of (i) outstanding loans in the aggregate principal amount of not less than \$81.1 million, (ii) Prepetition Letters of Credit in the amount of not less than \$25.9 million, and (iii) three Secured Hedging Agreements with a notional value of not less than \$275 million; (b) As of the Petition Date, the Loan Parties were lawfully indebted and liable to the Prepetition Term Lenders under the Prepetition Term Facility Documents in respect of Prepetition Term Loans in the aggregate principal amount of not less than \$429,140,515.29 million; (c) As of the Petition Date, Prepetition Liens shall be deemed to have been legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other challenges; (d) The Debtors have no valid claims, counterclaims or causes of action against or with respect to the Prepetition Secured Parties under any agreements by and among the Debtors and any such party that is in existence on the Petition Date; and (e) Subject to entry of a Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount equal to the DIP Term Loans and the DIP LC Loans funded under the DIP Facility <p>See Interim Order ¶ F</p> |
| Effect of Stipulations Bankruptcy Rule 4001(c)(1)(B)(iii) | <p>The Debtors' stipulations, admissions, agreements, and releases contained in the Interim Order shall be binding upon all parties in interest, including, without limitation, any official committee and any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless (a) such party in interest with requisite standing granted by the Court, has timely and properly filed an adversary proceeding or contested matter (i) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Debt, or the Prepetition Liens, or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "Challenge") against the Prepetition Secured Parties or their respective Representatives in connection with matters related to the Prepetition Secured Debt Documents, the Prepetition Secured Debt, the Prepetition Liens, or the Prepetition Collateral, (b) except as otherwise agreed to by the relevant Prepetition Agent or ordered by the Court, such Challenge has been filed prior to (i) with respect to parties in interest with requisite standing (other than a Creditors' Committee), 75 calendar days after entry of the Interim Order, and (ii) with respect to the Creditors' Committee, 60 calendar days after the appointment of the Creditors' Committee, (the "Challenge Period"), and (c) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred.</p> <p>See Interim Order ¶ 19</p> |
| Adequate Protection Bankruptcy Rule 4001(c)(1)(B)(ii) | <p>Until the indefeasible discharge of the Prepetition Term Facility and Prepetition Revolving Facility, and pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code, the Prepetition Secured Parties will be authorized to receive as adequate protection:</p> <ul style="list-style-type: none"> (a) Current cash payments on a monthly basis in an amount equal to the amount of post-petition interest and fees on the Prepetition Term Debt and the Prepetition |

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| | <p>Revolving Debt, as applicable, at the applicable default rate;</p> <ul style="list-style-type: none"> (b) Current cash reimbursement of the reasonable and documented fees, costs and expenses (including reasonable and documented professional fees) of the Prepetition Term Agent, the Prepetition Revolving Agent and the Ad Hoc Group; (c) To the extent of diminution in value of their collateral, replacement or, if applicable, new liens on the DIP Collateral to secure adequate protection claims that are junior to the DIP Liens and <i>pari passu</i> as between the Prepetition Term Loan Facility and Prepetition Revolving Facility; (d) Superpriority claims as provided for in section 507(b) of the Bankruptcy Code that are junior to the DIP Superpriority Claims; (e) Delivery of all reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents; and (f) Subject to entry of a Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount equal to the DIP Term Loans and the DIP LC Loans funded under the DIP Facility. <p>See Interim Order ¶ 14</p> |
| Covenants Bankruptcy Rule 4001(c)(1)(B) | <p><u>Affirmative Covenants:</u> Customary and appropriate for financings of this type, including, without limitation, (a) financial reporting and notices of material events, (b) preservation of existence; conduct of business, (c) payment of tax obligations, (d) performance of obligations under loan documents, (e) operation and maintenance of properties; (f) insurance, (g) keeping of books and records and granting of inspection rights, (h) compliance with applicable laws and agreements, (i) environmental matters, (j) further assurances, (k) delivery of title information, (l) ERISA compliance, (m) use of proceeds and (p) certain bankruptcy matters, case documents and milestones.</p> <p>See DIP Credit Agreement Art. VIII (Affirmative Covenants)</p> <p><u>Negative Covenants:</u> Customary and appropriate for financings of this type, including, without limitation, restrictions on (a) indebtedness, (b) liens, (c) restricted payments, (d) investments, loans and advances, (e) changes in the nature of the business or international operations, (f) proceeds of loans, (g) ERISA compliance, (h) sale or discount of receivables, (i) mergers, (j) environmental matters, (k) transactions with affiliates, (l) subsidiaries, (m) limitation on issuance of equity interests, (n) negative pledge agreements and dividend restrictions, (o) hedging agreements, (p) holding company, (q) sale and leaseback, (r) modifications of certain documents, (s) anti-terrorism law and anti-money laundering, (t) embargoed persons, (u) Southcross Holdings receivables, (v) additional bankruptcy matters, (w) no other <i>pari passu</i>/senior superpriority claims, and (x) sale of properties.</p> <p>See DIP Credit Agreement Art. IX (Negative Covenants)</p> |
| Events of Default Bankruptcy Rule 4001(c)(1)(B) | <p>In addition to any other events as may be agreed upon between the Debtors and the DIP Lenders, the DIP Credit Agreement contains customary events of default (each, an “Event of Default”), including:</p> <ul style="list-style-type: none"> (a) Failure to pay principal and interest when due; (b) Inaccuracy of representations and warranties in any material respect when made or deemed made; (c) Failure to comply with covenants; (d) Cross-default to payment defaults on other post-petition indebtedness; (e) Any unstayed or post-petition judgment; (f) Certain ERISA events; (g) Actual or asserted invalidity or impairment of any DIP Document or invalidity of |

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| | <p>any DIP Document asserted by any Loan Party;</p> <p>(h) Certain bankruptcy matters, including entry of an order (i) dismissing the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to chapter 7 cases, (iii) appointing a trustee, responsible officer or examiner having powers to operate the business, (iv) staying, reversing or vacating the Interim Order or the Final Order, or (v) terminating exclusivity to file a chapter 11 plan (or expiration of the exclusivity period);</p> <p>(i) Failure to satisfy an applicable milestone;</p> <p>(j) Any Loan Party seeks to obtain Court approval of a disclosure statement or plan of reorganization other than a disclosure statement relating to, or a plan that is, an Acceptable Plan, or any of the Loan Parties or affiliates file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;</p> <p>(k) Entry of a Sale Order unless such order contemplates either (i) repayment in full in cash of the DIP Facilities upon consummation of the Section 363 Asset Sale or (ii) extinguishment of the DIP Facility obligations as a result of the DIP Lenders' credit bid and/or assumption by the DIP Lenders in their acquisition of the Loan Parties pursuant to the Sale Order ;and</p> <p>(l) The Interim Order or the Final Order, as applicable, ceases to create a valid and perfected security interest and lien on the DIP Collateral.</p> <p>See DIP Credit Agreement § 10.01 (Events of Default)</p> |
| <p>Carve-Out Bankruptcy Rule 4001(c)(1)(B)</p> | <p>The “Carve-Out” shall be in an amount equal to the sum of: (a) all fees required to be paid to the clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (b) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$50,000 (without regard to the Carve-Out Trigger Notice); (c) to the extent allowed by the Court at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses (the “Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the “Professional Persons”), at any time on or before the first business day following the earlier of (a) delivery by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) of a Carve-Out Trigger Notice and (b) the Maturity Date (as defined in the DIP Credit Agreement) (such day, the “Carve-Out Trigger Date”), whether allowed by the Court prior to or after the Carve-Out Trigger Date; plus (d) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed \$4,000,000 (the “Post Trigger Date Carve-Out Amount”); <i>provided</i> that any success, completion, or similar fees payable from the Post-Trigger Date Carve-Out Amount shall be subject and subordinate, and junior in right of payment, to all other Professional Fees payable from the Post-Trigger Date Carve-Out (collectively, the “Carve-Out Amount”), in each case subject to the limits imposed by the DIP Orders.</p> <p>“Carve-Out Trigger Notice” shall mean a written notice delivered by email by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) to the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an “Event of Default” under the DIP Documents (an “Event of Default”), stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection, the Debtors shall fund a reserve in an amount equal to the Carve-Out Amount (the “Carve-Out Reserve”) from all cash on hand (including Cash Collateral, but excluding all Cash</p> |

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| | <p>Collateral in the Cash Collateral Account that secures the DIP Letters of Credit as of such date, and, including any available cash thereafter held by any Debtor (exclusive of any cash utilized to cash collateralize the Prepetition Letters of Credit in connection with the Prepetition L/C Refinancing)).</p> <p><i>See Interim Order ¶ 5</i></p> |
| <p>Milestones Bankruptcy Rule 4001(c)(1)(B)(v) and (vi)</p> | <p>In addition to such other milestones as may be agreed to between the Debtors and the DIP Lenders:</p> <ul style="list-style-type: none"> (a) Filing of this Motion on the Petition Date. (b) Entry of the proposed Interim Order no later than 5 days after the Petition Date. (c) Entry of the Final Order no later than 40 days after the Petition Date. <p>First 50 Days</p> <ul style="list-style-type: none"> (a) Debtors will have received non-binding first-round indications of interest from potential purchasers of all or substantially all of the Debtors' assets. (b) If, within 50 days of the Petition Date, the Borrower and the Required DIP Lenders have not reached an agreement as to an Acceptable Plan, then the Debtors shall pursue the Section 363 Asset Sale. <p>If Acceptable Plan within First 50 Days:</p> <ul style="list-style-type: none"> (a) Filing of a Plan and Disclosure Statement and motion seeking approval of the Disclosure Statement no later than 55 days after the Petition Date. (b) Entry of an order approving the disclosure statement no later than 95 days after the Petition Date. (c) Entry of an order approving the plan no later than 145 days after the Petition Date (a "Confirmation Order"). (d) The discharge of the New DIP Loans and the Roll-Up Loans (by payment in full in cash or such other treatment as agreed to by the DIP Lenders and the Debtors) no later than 30 days after entry of the Confirmation Order. <p>If no Acceptable Plan within First 50 Days:</p> <ul style="list-style-type: none"> (a) Filing of a motion seeking approval of Section 363 Asset Sale and bidding procedures (a "Bid Procedures and Sale Motion") no later than 55 days after the Petition Date. (b) Final bid deadline no later than 100 days after the Petition Date ("Bid Deadline"). (c) Entry of an order approving the winning bid no later than two weeks after the Bid Deadline ("Sale Order"). (d) The discharge of the New DIP Loans in full in cash and the Roll-Up Loans no later than the earlier of the Maturity Date and 30 days of entry of the Sale Order. <p><i>See DIP Credit Agreement § 8.23 (Case Milestones) and Interim Order ¶ 17</i></p> |
| <p>Limitations on Use of DIP Financing Bankruptcy Rule 4001(c)(1)(B)</p> | <p>No proceeds of the DIP Financing, DIP Collateral, Prepetition Collateral (including Cash Collateral) or the Carve-Out may be used:</p> <ul style="list-style-type: none"> (a) for Professional Fees incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or |

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| | <p>(ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, the Prepetition Secured Debt (including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise), the DIP Liens, or the Prepetition Liens or against any of the Prepetition Secured Parties or their respective Representatives;</p> <p>(b) to prevent, hinder, or otherwise delay any of the DIP Agent's or the Prepetition Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Secured Debt Documents or the Interim Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a Remedies Hearing;</p> <p>(c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order or under the DIP Documents or the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion; or</p> <p>(d) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court;</p> <p><i>provided</i> that, prior to (but not after) the delivery of a Carve-Out Trigger Notice, the Creditors' Committee, if any, may use the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral) and/or the Carve-Out in an aggregate amount of up to \$50,000 to investigate (y) the claims and liens of the Prepetition Secured Parties and (z) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties.</p> <p><i>See</i> Interim Order ¶ 20</p> |
| 506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) | <p>Subject only to and effective upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the applicable Prepetition Agent, as the case may be.</p> <p><i>See</i> Interim Order ¶ 11</p> |
| Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi) | <p>Subject to entry of the Final Order, the DIP Liens shall attach to the proceeds of claims and causes of action under chapter 5 of the Bankruptcy Code.</p> <p><i>See</i> Interim Order ¶ 8(a)</p> |
| Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix) | <p>The DIP Documents provide for customary indemnification of the DIP Agent and DIP Lenders.</p> <p><i>See</i> DIP Credit Agreement § 12.03(b) [Indemnification by the Borrower]</p> |
| Automatic Stay Waiver/Modification Bankruptcy Rule 4001(c)(1)(B)(iii) | <p>Pursuant to the Interim Order, the automatic stay imposed by section 362 of the Bankruptcy Code shall be modified as necessary to permit the DIP Agent and DIP Lenders to enforce all their rights under the DIP Documents.</p> <p><i>See</i> Interim Order ¶ 10(d)</p> |
| Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of | <p>Whether or not the DIP Agent, on behalf of the DIP Lenders, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests</p> |

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| Liens Bankruptcy Rule 4001(c)(1)(B)(vii) | shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination, at the time and on the date of entry of this Interim Order. <i>See Interim Order ¶ 16</i> |
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Provisions to Be Highlighted Pursuant to Local Rule 4001-2

9. Local Rule 4001-2(a)(i) requires a debtor to recite whether the proposed form of post-petition financing order contains certain provisions of the type enumerated therein, identify the location of such provisions in the proposed order, and justify the inclusion of such provisions in the proposed order. The Debtors hereby disclose the below provisions (collectively, the “**Highlighted Provisions**”) contained in the proposed Interim Order in accordance with Local Rule 4001-2(i):

- **Cross-Collateralization Provisions (Local Rule 4001-2(a)(i)(A)):** The Interim Order does not provide for cross collateralization, other than replacement liens as adequate protection.
- **Findings of Fact (Local Rule 4001-2(a)(i)(B)):** Pursuant to paragraph F of the Interim Order, the Debtors have provided certain agreements and stipulations concerning the Prepetition Secured Debt, described above. The stipulations are subject to challenge by parties in interest (subject to the limitations set forth in paragraph 20 of the Interim Order) and will not be binding upon any party in interest until the conclusion of the Challenge Period. With respect to all potential defendants, the Challenge Period will not end until, at the earliest, (Y) 75 days after entry of the Interim Order and, (Z) in the case of any Creditors’ Committee that is appointed, 60 days from such appointment, as set forth in paragraph 19(a) of the Interim Order (for the avoidance of doubt, if a Committee is appointed after the period in sub-clause (Y) has expired, the Challenge Period shall have run)
- **506(c) Waiver (Local Rule 4001-2(a)(i)(C)):** Subject to entry of the Final Order, the Debtors are seeking approval of a waiver of rights under section 506(c) of the Bankruptcy Code in respect of the DIP Collateral. Accordingly, parties will have notice of (and an opportunity to object to) the Debtors’ proposed waiver.
- **Liens on Avoidance Actions (Local Rule 4001-2(a)(i)(D)):** Pursuant to paragraph 8(a) of the Interim Order, the Debtors are seeking approval of liens only on the proceeds of Avoidance Actions and only upon entry of the Final Order. Accordingly, parties will have notice of, and an opportunity to object to, the Debtors’ proposed liens.

- **Provisions Authorizing “Roll Up” or Repayment of Prepetition Debt (Local Rule 4001-2(a)(i)(E)):** Pursuant to paragraph 3 of the Interim Order (a) upon entry of the Final Order, Prepetition Term Loans in an aggregate principal amount of \$127.5 million will be refinanced under the DIP Roll-Up Facility, subject and subordinate to the DIP New Money Facility, and (b) upon entry of the Interim Order, all Prepetition Letters of Credit will be cash collateralized with the proceeds of New DIP Loans and deemed reissued as DIP Letters of Credit under the DIP L/C Sub-Facility.
- **Disparate Treatment of Debtor and Creditors’ Committee Professionals in Carve-Out (Local Rule 4001-2(a)(i)(F)):** The Interim Order contains no provision for disparate treatment for professionals retained by the Creditors’ Committee, if any, with respect to the Carve-Out.
- **Nonconsensual Priming of Prepetition Liens (Local Rule 4001-2(a)(i)(G)):**⁴ The Interim Order does not provide for non-consensual priming of any existing lien.
- **552(b) Waiver (Local Rule 4001-2(a)(i)(H)):** Pursuant to paragraphs 8(a), 10(d), and 12 of the Interim Order, the Debtors are seeking approval of a waiver of rights under Bankruptcy Code section 552(b) in respect of the DIP Collateral only upon entry of the Final Order. Accordingly, parties will have notice of (and an opportunity to object to) the Debtors’ proposed waiver.

Background

I. The Debtors’ Prepetition Capital Structure

A. The Prepetition Secured Credit Facilities

10. On August 4, 2014, Southcross, as borrower, entered into that certain Third Amended and Restated Revolving Credit Agreement, which has been amended six times through August 10, 2018, (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**Prepetition Revolving Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the “**Prepetition**

⁴ The Debtors continue to negotiate the adequate protection terms of the Interim Order with certain of its prepetition secured creditors. While the Debtors expect that they will reach consensus with each party, the Debtors reserve the right to seek nonconsensual priming of prepetition liens at the first day hearing.

Revolving Facility Documents”) with Wells Fargo Bank, N.A., as administrative agent (in such capacity, the “**Prepetition Revolving Agent**”), and the lenders party thereto (the “**Prepetition Revolving Lenders**” and, together with the Prepetition Revolving Agent, the “**Prepetition Revolving Secured Parties**”), pursuant to which the Prepetition Revolving Lenders provided revolving credit to, and issued letters of credit for the account of, Southcross, under a secured five-year revolving credit facility due August 4, 2019 (the “**Prepetition Revolving Facility**”). The Prepetition Revolving Facility is guaranteed on a joint and several basis by each of Southcross’s wholly-owned direct and indirect Debtor subsidiaries. Southcross GP is not a borrower or guarantor under the Prepetition Revolving Facility, and the Prepetition Revolving Credit Agreement expressly disclaims recourse to Southcross GP. The Prepetition Revolving Facility was originally a \$200 million facility with a \$75 million sublimit for Letters of Credit (as defined in the Prepetition Revolving Credit Agreement); however, the Prepetition Revolving Lenders have reduced their commitments over time to \$115 million, with a sublimit of \$50 million for Letters of Credit. As of today, approximately \$81.1 million in aggregate principal amount of loans and \$25.9 million of undrawn Letters of Credit are outstanding under the Prepetition Revolving Facility (the “**Prepetition Letters of Credit**”), and Southcross’s obligations under three Secured Hedging Agreements (as defined in the Prepetition Revolving Credit Agreement), consisting of interest-rate caps with a notional value of \$275 million, are secured under the Prepetition Revolving Facility (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Revolving Facility Documents, the “**Prepetition Revolving Debt**”). Cash interest on money borrowed under the

Prepetition Revolving Facility accrues at LIBOR plus a margin between 2.0% and 7.5% and is due monthly. The Prepetition Revolving Credit Agreement includes several financial covenants.

11. Concurrent with its entry into the Prepetition Revolving Credit Agreement, Southcross entered into that certain Term Loan Credit Agreement (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**Prepetition Term Loan Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the “**Prepetition Term Facility Documents**”), dated as of August 4, 2014, by and among Southcross, as borrower, Wilmington Trust, N.A., as successor administrative agent (in such capacity, the “**Prepetition Term Agent**” and, together with the Prepetition Revolving Agent, the “**Prepetition Agents**”), and the lenders party thereto (the “**Prepetition Term Lenders**” and, together with the Prepetition Term Agent, the “**Prepetition Term Secured Parties**” and, together with the Prepetition Revolving Secured Parties, the “**Prepetition Secured Parties**”), pursuant to which the Prepetition Term Lenders provided loans to Southcross, under a secured seven-year \$450 million term loan facility due August 4, 2021 (the “**Prepetition Term Facility**” and, together with the Prepetition Revolving Facility, the “**Prepetition Secured Credit Facilities**”). The Prepetition Term Facility is guaranteed on a joint and several basis by each of Southcross’s wholly-owned direct and indirect Debtor subsidiaries. Southcross GP is not a borrow or guarantor under the Prepetition Term Facility, and the Prepetition Term Loan Credit Agreement expressly disclaims recourse to Southcross GP. Cash interest on the term loans provided under the Prepetition Term Facility accrues at LIBOR plus 4.25% per annum and is due quarterly along with amortization of 1.0% per annum. Due to amortization, the outstanding principal of term loans (the “**Prepetition Term Loans**”) under the Prepetition Term Facility is

now \$429,140,515.29 million (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided therein, the “**Prepetition Term Debt**” and, together with the Prepetition Revolving Debt, the “**Prepetition Secured Debt**”).

12. Obligations under both Prepetition Secured Credit Facilities are subject to that certain Intercreditor Agreement, dated as of August 4, 2014, by and among Southcross, the Prepetition Agents and the other grantors party thereto (the “**Intercreditor Agreement**” and, together with the Prepetition Revolving Facility Documents and the Prepetition Term Facility Documents, the “**Prepetition Secured Debt Documents**”). Pursuant to the Intercreditor Agreement and the other Prepetition Secured Debt Documents, the Prepetition Secured Debt under each Prepetition Secured Credit Facility is secured by *pari passu* first-priority liens on substantially all of Southcross’s real, personal, and other property, as more fully described in the Prepetition Secured Debt Documents, which includes processing and other facilities, pipelines, cash, contracts, accounts, inventory, general intangibles, fixtures and various other assets. The Prepetition Secured Debt Documents set forth similar covenant packages under each of the Prepetition Secured Credit Facilities (except that only the obligations under the Prepetition Revolving Facility benefit directly from financial covenants), including a requirement that Southcross furnish audited financial statements on or before each annual deadline established by the U.S. Securities and Exchange Commission (this year, by April 1) without a “going concern” or similar qualification or exception.

B. The Unsecured Sponsor Notes

13. Each Debtor, other than Southcross GP, is an obligor under certain unsecured notes outstanding, as of the date hereof, in the aggregate principal amount of approximately \$17.4 million (the “**Unsecured Sponsor Notes**”). Southcross issued the Unsecured Sponsor

Notes in an aggregate amount of \$15 million on January 22, 2018 to funds and accounts managed or advised by the company's equity sponsors, Tailwater Capital LLC and EIG Global Energy Partners, LLC (collectively, together with such funds and accounts, the "**Sponsors**") in consideration for cash paid to Southcross pursuant to a Backstop Commitment Investment Letter, dated as of December 29, 2016, by and among Southcross, Southcross Holdings LP ("**Southcross Parent**"), the Sponsors, and the Prepetition Revolving Agent. The Unsecured Sponsor Notes mature on November 5, 2019, and bear interest at a rate of 12.5% per annum, which was paid in kind through December 31, 2018. The Unsecured Sponsor Notes are subordinated to the Prepetition Revolving Facility pursuant to a Subordination Agreement, dated as of January 22, 2018, by and among the Sponsors initially holding the Unsecured Sponsor Notes and the Prepetition Revolving Agent.

II. The Debtors' Need for Post-Petition Financing and Access to Cash Collateral

14. Businesses throughout the natural gas industry came under intense pressure from 2014 to 2016, when gas prices (measured per million BTU at the Henry Hub) dropped from a high of \$8.15 on February 10, 2014 to a low of \$1.49 on March 4, 2016. The Debtors' businesses depend almost entirely on the demand for processing of newly extracted natural gas, and their experience during the crash was no exception: the price of Southcross's common units plummeted from a peak of \$24.79 in July of 2014 to a trough of \$0.38 in February of 2016. Nevertheless, while dozens of the Debtors' peer companies (including non-Debtor Southcross Parent) filed for chapter 11 protection as a result of the commodity price declines beginning in late 2014, the Debtors narrowly avoided filing for bankruptcy through operational cutbacks, several capital contributions from Southcross Parent and the Sponsors, and many amendments to its Prepetition Revolving Credit Agreement to, among other things, waive certain financial covenants.

15. Despite their ability to avoid a chapter 11 filing during the crash, the Debtors have never fully recovered. In fact, some of the Debtors' major facilities have been permanently shut down, the Bonnie View facility has only recently come back online after significant capital expenditures, and the Debtors continue to labor under a heavier debt burden than competitors that equitized a substantial portion of their funded debt starting in 2015. Meanwhile, natural gas prices have stayed consistently low, with current prices below \$3.00 per million BTU.

16. Today, the Debtors and the Prepetition Secured Parties believe that an initial marketing process, followed by the prosecution of a to be agreed upon plan of reorganization ("**Plan Process**"), or absent such agreement, the pursuit of a sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code (the "**Section 363 Asset Sale**") will best maximize value for their stakeholders. Therefore, as described in the Howe Declaration, the Debtors intend to solicit non-binding indications of interest from potential purchasers for the first 50 days of these Chapter 11 Cases. Following this initial 50 day period, if the Debtors and Required Lenders have reached an agreement as to an Acceptable Plan (as defined in the DIP Credit Agreement), then the Debtors will seek to confirm such Acceptable Plan. If the Debtors and Required Lenders have not reached an agreement as to an Acceptable Plan in the first 50 days of the case, the Debtors will change its course of action and pursue a the sale of all or substantially all of its assets pursuant to a Section 363 Asset Sale. In connection with a Section 363 Asset Sale, the Debtors and the DIP Lenders will negotiate in good faith a reasonable wind-down budget to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties' estates on a reasonable and appropriate timeline.

17. Under either path, the Debtors will remain subject to applicable milestones agreed to with their DIP Lenders. Without chapter 11 protection and the availability of debtor-in-possession financing, however, the Debtors would likely be unable to execute its management's value maximizing strategy as a result of upcoming liquidity and credit events.

18. In order to ensure their continued operations during the Chapter 11 Cases and to assure stakeholders of their ability to pursue either the Plan Process or Section 363 Asset Sale process within the proposed time frame, the Debtors are seeking immediate approval to obtain superpriority, priming lien debtor-in-possession financing in the aggregate principal amount of \$255 million (the "**DIP Financing**"), consisting of (a) the \$127.5 million DIP New Money Facility, with \$55 million available to cash collateralize DIP Letters of Credit under the DIP L/C Sub-Facility, and (b) the \$127.5 million DIP Roll-Up Facility. Certain of the Prepetition Term Lenders have agreed to commit, severally and not jointly, to provide the DIP Financing upon Southcross's demand pursuant to that certain Commitment Letter, dated March 31, 2019, a copy of which is attached hereto as Exhibit D. The liquidity to be provided by the DIP Facilities, together with the use of Cash Collateral, will enable the Debtors to fund their operations during the course of the Chapter 11 Cases as they conduct the Plan Process or Section 363 Asset Sale and to preserve and maximize the value of their estates for the benefit of all parties in interest. The Debtors currently have \$2.4 million of unrestricted cash on hand. Based on the Debtors' forecast, they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover their operating costs going forward or the projected restructuring costs of the Chapter 11 Cases without the DIP Financing, leaving them unable to complete either the Plan Process or Section 363 Asset Sale.

III. The Debtors' Prepetition DIP Financing Marketing Efforts

19. Prior to commencing the Chapter 11 Cases, the Debtors and their advisors had been engaged in discussions over a period of several weeks with representatives of the Prepetition Revolving Lenders and representatives of the Prepetition Term Lenders about their interest in providing post-petition financing or their willingness to consent to third-party post-petition financing. Both groups insisted that they would not consent to any priming of their security interests as part of a third-party debtor-in-possession financing. The Debtors do not have unencumbered assets of sufficient value to support enough collateralized financing to meet the Debtors' cash needs during the Chapter 11 Cases. Consequently, the only practical alternative to post-petition financing provided by the Prepetition Secured Parties would have been financing that was either (a) partially unsecured or secured by liens junior to those securing the Prepetition Secured Debt or (b) secured by priming liens senior to those securing the Prepetition Secured Debt, which priming was certain to be contested.

20. The Debtors reached out to a number of potential third-party lending institutions with experience in providing debtor-in-possession financing, however none of these parties expressed an interest in providing the Debtors with the financing required on an unsecured or junior secured basis. Moreover, the Debtors determined that seeking financing on a nonconsensual priming basis would almost certainly involve expensive and unpredictable litigation at the early stages of the Chapter 11 Cases that would be materially destabilizing to the Debtors' business operations.

21. As a result, in parallel with their overall restructuring negotiations, the Debtors continued to engage on the terms of a potential post-petition financing with the Prepetition Term Lenders and the Prepetition Revolving Lenders.

22. Following negotiations with a group of Prepetition Term Lenders, certain of its members (the “**Ad Hoc Group**”) agreed to provide the DIP Financing to the Debtors with the consent of a majority of the Prepetition Revolving Lenders. The DIP Lenders were unwilling to provide the Debtors with financing on an unsecured or non-superpriority basis, but were willing and able to provide the financing on the time frame the Debtors required. The negotiations with the DIP Lenders were at arm’s length and were hard-fought. Many term sheets were exchanged in a very short period of time in March of 2019, and negotiations over the terms and structure of the DIP Financing continued into the days leading up to the Petition Date. In particular, the Debtors negotiated financing from the DIP Lenders that, although it contemplates either a Plan Process or Section 363 Asset Sale, was neither tied to a particular restructuring process, nor required the prior execution of a stalking horse bid. Other provisions include ensuring access to \$30 million of the DIP New Money Facility and \$55 million of DIP L/C Sub-Facility immediately after entry of the Interim Order and milestones that will provide the Debtors with sufficient time to consummate either the Plan Process or Section 363 Asset Sale process. Furthermore, Southcross, the Prepetition Term Agent and certain of the Prepetition Term Lenders entered into a Second Amendment to the Prepetition Term Loan Credit Agreement, dated as of March 29, 2019, for the purpose of facilitating the roll-up of certain Prepetition Term Loans into the DIP Facilities. The Debtors’ management team was actively involved throughout this process, and the Debtors’ board of directors (the “**Board**”) was kept well-informed.

23. Ultimately, the proposal from the DIP Lenders was not only the most advantageous proposal for financing available to the Debtors, but also the only one available. As a result, the Debtors’ management, advisors, and Board concluded that, given the circumstances, it exercise sound business judgment to pursue such financing.

IV. The Debtors' Proposed Adequate Protection Is Fair and Reasonable

24. The proposed DIP Financing, as contemplated by the DIP Documents, in each case subject to customary exclusions including the Permitted Senior Liens, and the Carve-Out will provide the DIP Lenders continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition security interests in and liens on the DIP Collateral, including the Prepetition Collateral, which liens will prime and be senior to the Prepetition Liens. In addition, the Interim Order authorizes the Debtors to use Prepetition Collateral (including such Prepetition Collateral consisting of "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code ("**Cash Collateral**")), subject to the terms and conditions set forth therein.

25. The adequate protection contemplated by the DIP Financing and the Interim Order is designed to protect the interests of the Prepetition Secured Parties in the Debtors' property from any diminution in value caused by the imposition of the automatic stay and the Debtors' use of the Prepetition Collateral, including Cash Collateral, during the pendency of the Chapter 11 Cases. Specifically, the Debtors have agreed to provide to the Prepetition Secured Parties the following forms of adequate protection to the extent of diminution in value of their collateral and subject, in each case, to the Permitted Senior Liens, and the Carve-Out (collectively, the "**Adequate Protection Obligations**"):

- (a) Current cash payments on a monthly basis in an amount equal to the amount of post-petition interest and fees on the Prepetition Term Debt and the Prepetition Revolving Debt, as applicable, at the applicable default rate;
- (b) Current cash reimbursement of the reasonable and documented fees, costs, and expenses (including reasonable and documented professional fees) of the Prepetition Term Agent, the Prepetition Revolving Agent, and the Ad Hoc Group;

- (c) Replacement or, if applicable, new liens on the DIP Collateral to secure adequate protection claims that are junior to the DIP Liens and *pari passu* as between the Prepetition Term Loan Facility and Prepetition Revolving Facility;
- (d) Superpriority claims as provided for in section 507(b) of the Bankruptcy Code that are junior to the DIP Superpriority Claims; and
- (e) Delivery of all reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents.

26. The DIP Facilities further provide the liquidity necessary to stabilize and fund the Debtors' operations during the course of the Chapter 11 Cases as they seek to preserve and maximize the value of their estates for the benefit of all parties in interest. Without the proposed DIP Financing, the Debtors' estates could be required to undertake a liquidation process on a highly expedited basis and, in that scenario, secured creditor recoveries would likely be materially impaired when compared to recoveries available if the Debtors are able to access the proposed DIP Financing. The proposed DIP Financing therefore eliminates the risk of an expedited liquidation and, by avoiding that possible near-term outcome, provides a direct benefit to the Prepetition Secured Parties.

V. The DIP Facilities Are in the Best Interest of the Estates

27. The Debtors have accepted the DIP Lenders' proposal to provide the DIP Financing. The DIP Facilities will provide the Debtors with immediate access to the liquidity necessary to stabilize the Debtors' businesses during the pendency of the Chapter 11 Cases. Moreover, the liquidity provided under the DIP Facilities is necessary to facilitate the administration of the Chapter 11 Cases, fund all payments contemplated by the Debtors' "first day motions," and ensure that the Debtors are able to conduct and consummate either the Plan Process or the Section 363 Asset Sale. The Debtors believe that the immediate approval of the DIP Financing is critical to sending a signal to the Debtors' vendors, suppliers, customers,

regulators, and approximately 205 employees that the Debtors intend, and will have the ability, to maintain current operations and successfully consummate a sale of substantially pursue a restructuring.

28. For these reasons, and for the reasons set forth below, in the D’Souza Declaration, and in the Howe Declaration, the Debtors believe that entering into the DIP Credit Agreement will maximize the value of the Debtors’ estates and is a sound exercise of the Debtors’ business judgment. Accordingly, the Debtors respectfully request that the Court enter the Interim Order.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Post-Petition Financing on a Senior Secured and Superpriority Basis

A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Financing

29. Provided that an agreement to obtain post-petition credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) ([Courts generally] defer to a debtor’s own business judgment so long as a request for financing does not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”); *In re Trans*

World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving post-petition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”).

30. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.”

Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC), 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis in original, internal alterations, and quotations omitted)).

Courts require only that the debtors “show that a sound business purpose justifies such actions.”

In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (citations omitted).

See also In re Phx. Steel Corp., 82 B.R. 334, 335–36 (Bankr. D. Del. 1987).

31. Further, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Documents, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York observed that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

32. Under the circumstances, the Debtors' determination to move forward with the DIP Financing is a sound exercise of their business judgment following a thorough process and careful evaluation of alternatives. *First*, and most importantly, without access to the DIP Financing, the Debtors will not be able to pay expenses necessary to sustain their ongoing operations and, thus, they could be forced to shut down, which would irreparably impair the value of the Debtors during these Chapter 11 Cases. *See* D'Souza Decl. ¶ 19. *Second*, the DIP Financing is the only available source of liquidity to make such payments. *Id.* *Third*, the Debtors negotiated the DIP Credit Agreement and other DIP Documents with the DIP Lenders in good faith, at arms' length, and with the assistance of their advisors. *Id.* The Debtors' management team and legal and financial advisors were actively involved throughout the process, and the Debtors believe that they have obtained the best financing available given the relative bargaining power of the Debtors and the DIP Lenders. *Id.* The milestones in the DIP Documents are tailored to comport with the timeline of the Plan Process, or Section 363 Asset Sale process, as applicable. *Id.* *Fourth*, the Debtors believe that the terms of the DIP Facilities are reflective of the market for financings of this type. The pricing, fees, and covenants provided for in the proposed DIP Facilities are reasonable, particularly for a severely distressed borrower with an urgent need for liquidity and an inability to solicit any viable alternative proposals. *Id.* Accordingly, the Court should authorize the Debtors' entry into the DIP Documents as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) to Obtain Post-Petition Financing on a Senior Secured and Superpriority Basis

33. The Debtors propose to obtain financing under the DIP Facilities by providing the DIP Secured Parties superpriority claims and liens pursuant to section 364(c) and (d)(1) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Secured Parties first

priority liens on substantially all of the Debtors' assets and administrative expense claims in the Chapter 11 Cases with priority over all other claims (subject in each case only to the Permitted Senior Liens, and the Carve-Out.

34. The Debtors meet the requirements for relief under section 364(c) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain post-petition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides as follows:

If the trustee 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 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). In evaluating proposed post-petition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and consider whether (a) unencumbered credit or alternative financing without superpriority status is available to the debtor, (b) the credit transactions are necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011); *In re Aqua Assoc.*, 123 B.R. 192, 195–99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *In re Crouse Group, Inc.*, 71 B.R. 544, 549–51 (Bankr. E.D. Pa. 1987); *see also Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990).

35. Further, the Debtors meet the requirements for relief under section 364(d) of the Bankruptcy Code, which permits a debtor, with Court authorization, to obtain post-petition financing secured by liens that are senior to prepetition liens. Specifically, section 364(d) of the Bankruptcy Code provides as follows:

- (1) The court, after notice and a hearing, may 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 trustee is unable to obtain such credit otherwise; and
 - (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
- (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d). Accordingly, the Debtors may incur “priming” liens under the DIP Facilities if either (a) the Prepetition Secured Parties have consented or (b) the Prepetition Secured Parties’ interests in collateral are adequately protected.

36. Here, the Debtors have amply satisfied the necessary conditions under section 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Documents. Given the circumstances, the Debtors could not obtain credit on an unsecured, junior secured, or administrative expense basis. For all the reasons discussed further below, the Debtors respectfully submit that the Court should grant the Debtors’ request to enter into the DIP Facilities pursuant to section 364(c) and (d) of the Bankruptcy Code.

- (i) The Debtors Are Unable to Obtain Financing on More Favorable Terms Than the DIP Facilities

37. In order to satisfy this test, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by section 364(c) or 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c), to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). This is especially true where time is of the essence. *See In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987).

38. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor on an unsecured or administrative priority basis, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989). *See also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the requirements of section 364 of the Bankruptcy Code were met); *In re Ames*

Dep't Stores, Inc., 115 B.R. 34, 37–39 (Bankr. S.D.N.Y. 1990) (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

39. As described more fully above and in the D'Souza Declaration, the Debtors sought financing from multiple market sources and engaged in extensive and good faith negotiations with the Ad Hoc Group to obtain the best financing terms available. *See* D'Souza Decl. ¶ 11. However, due to the uncertainties related to the Chapter 11 process and ultimate form of the go-forward restructuring of the Debtors, no lenders were willing to provide post-petition financing to meet the Debtors' immediate cash need in the timing required on an unsecured, junior secured, or administrative priority basis, or otherwise on terms better than those under the DIP Documents. *Id.* ¶ 13. Simply put, the DIP Facilities provide the Debtors with the liquidity they need at the lowest cost available, and, therefore, the Debtors have concluded that it represents the Debtors' best (and only) available post-petition financing option. *Id.* ¶ 16. For these reasons, the Debtors submit that they have met the standard for obtaining the proposed DIP Financing.

(ii) The DIP Facilities Are Necessary to Preserve the Value of the Debtors' Estates

40. The Debtors, as debtors in possession, have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtors' immediate access to post-petition financing is essential to their ability to effectively carry out that duty. The Debtors currently have \$2.4 million of unrestricted cash on hand. *See* D'Souza Decl. ¶ 10. Without the proceeds of the DIP Facilities, the Debtors would be (a) unable to fund critical payments, including obligations such as employee payroll and vendor payments, in the ordinary course of business that are essential to the Debtors' operational

viability and (b) rapidly destabilized and forced to shut down their facilities in the near term, which would have irreparable consequences to the Debtors' restructuring and to the Debtors' stakeholders. *Id.* The DIP Facilities will provide the Debtors with sufficient liquidity to fund their operations and maximize the value of their assets as they work toward an efficient resolution of these Chapter 11 Cases. *Id.* ¶ 23.

(iii) The Terms of the DIP Facilities and the Proposed Adequate Protection Are Fair, Reasonable, and Adequate Under the Circumstances

41. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as disappointing as the [debtor-in-possession financing] pricing terms are, I find the provisions [of the financing] reasonable here and now.").

42. Here, the terms of the DIP Facilities are fair, appropriate, reasonable, and adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors. As set forth in the D'Souza Declaration, the covenants and milestones included in the DIP Documents are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. *See D'Souza Decl.* ¶ 25. The terms of the DIP Facilities are also fair and reasonable under the circumstances, including, most notably, that there was only

one viable, committed provider of incremental post-petition financing for the Debtors: certain members of the Ad Hoc Group. *Id.*

43. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay:

- (a) New DIP Loan Interest Rate: Interest at the LIBO Rate (subject to a 1.0% floor) plus 10.0% per annum (with respect to Eurodollar Loans) or the Alternative Base Rate plus 9.0% per annum (with respect to ABR Loans); and default interest at the rate of 2.0% per annum.
- (b) Roll-Up Loan Interest Rate: Interest at the rate applicable to “ABR Loans” under the Prepetition Term Loan Credit Agreement (including the default rate to the extent received by Prepetition Term Lenders).
- (c) Letter of Credit Fronting Fees: 0.125% of the stated amount of each Prepetition Letter of Credit deemed reissued and 0.50% of the stated amount of each issued DIP Letter of Credit.
- (d) Structuring Fee: 100 bps of the aggregate principal amount of DIP New Loan commitments, payable on the Closing Date to each Lead DIP Lender.
- (e) Put Premium: 100 bps of the aggregate principal amount of New DIP New Loans that may be put to the signatories to the commitment letter, payable on the Closing Date to each DIP Lender that is a signatory to the Commitment Letter.
- (f) OID: 150 bps of the aggregate principal amount of the New DIP Loans, payable on the applicable funding date of such New DIP Loans.
- (g) Extension Fee: 100 bps of the aggregate outstanding principal amount of DIP New Money Loans and Roll-Up Loans, upon consent of such extension by the Required Lenders, payable to each DIP Lender that consents to an extension of the Maturity Date of up to three months at the request of the Borrower.
- (h) Exit Fee: 150 bps of the aggregate principal amount of New DIP Loans, payable on the Maturity Date or, if the New DIP Loans are prepaid, on the date of such prepayment.

44. As set forth in the D’Souza Declaration, the Debtors believe that the fees to be paid under the DIP Facilities are consistent with the market and are appropriate, particularly in

light of the circumstances of the Chapter 11 Cases and market practice for debtor-in-possession financings of this size and type. *See* D’Souza Decl. ¶ 26.

45. All of the terms of the DIP Facilities were strenuously negotiated by the Debtors and their advisors to ensure that the terms were as favorable to the Debtors as possible under the circumstances, and the Debtors believe that such terms represent fair consideration for the critical financing being provided by the DIP Lenders. *Id.* ¶ 26. Accordingly, the fees provided for under the DIP Facilities are reasonable and within market practice for debtor-in-possession financings of this size and type, and the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with the DIP Facilities.

46. Although the Bankruptcy Code does not define “adequate protection,” section 361 of the Bankruptcy Code delineates a non-exhaustive list of the available types of adequate protection, which include periodic cash payments, additional liens, replacement liens, and the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361. The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted). When priming of liens is sought under section 364(d) of the Bankruptcy Code, the courts also examine whether the prepetition secured creditors are being provided adequate protection for the value of their liens. *See In re Utah 7000, LLC*, No. 08-21869, 2008 WL 2654919, at *3 (Bankr. D. Utah July 3, 2008); *In re Beker Indus. Corp.*, 58 B.R. 725, 737 (Bankr. S.D.N.Y. 1986).

47. As described more fully above, the Debtors propose to provide a variety of adequate protection to protect the interests of the Prepetition Secured Parties in the Debtors' property from any diminution in value of the Prepetition Collateral (including Cash Collateral) resulting from the use of the Cash Collateral by the Debtors and the imposition of the automatic stay, subject, in each case, to the liens and claims of the DIP Lenders, the Permitted Senior Liens, and the Carve-Out.

48. In addition to the proposed Adequate Protection Obligations, the critical liquidity provided by the proposed DIP Facilities permits the Debtors to avoid a disorderly chapter 7 liquidation and instead conduct either the Plan Process, or the Section 363 Asset Sale process, in an orderly manner, thereby maximizing the value of the Prepetition Collateral for the benefit of all parties in interest, particularly the Prepetition Secured Parties. Courts have held enhancement of collateral is a critical component of adequate protection and have considered "whether the value of the debtor's property will increase as a result of the" use of the collateral. *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) (finding that improvements to collateral financed by post-petition financing proceeds would improve collateral value in excess of loans and, therefore, provided adequate protection); *see In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996) (approving post-petition financing to be used, in part, to fund cleanup costs of encumbered property anticipated to improve the value of the collateral, thereby serving the goal of adequate protection). The Debtors, therefore, further submit that the adequate protection as described herein is fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

C. The Refinancing of a Portion of the Prepetition Secured Debt Is Appropriate

49. The proposed roll-up of the Prepetition Term Loans owed to the DIP Lenders and the cash collateralization and deemed reissuance of the Prepetition Letters of Credit is also

justified under the circumstances. *First*, the DIP Lenders specifically negotiated for the Prepetition Debt Refinancing in the context of their commitment to provide the DIP Facilities on the terms described herein. *See* D’Souza Decl. ¶ 28. The Debtors, on the one hand, and the DIP Lenders, on the other, engaged in arm’s length negotiations and ultimately agreed to the Prepetition Debt Refinancing as consideration for, among other things, the DIP Lenders making available millions of dollars in additional “new money” to fund the Chapter 11 Cases. *Id.* Indeed, the Prepetition Debt Refinancing is a condition of the DIP Facilities, without which, the DIP Lenders would not have agreed to provide the DIP Financing. *Id.*

50. *Second*, the Prepetition Debt Refinancing will not prejudice the Debtors’ stakeholders. The Prepetition Secured Parties’ Prepetition Liens are first-priority liens on substantially all assets of the Debtors, and the DIP Liens, from which the refinanced obligations will benefit, are on substantially the same assets. *See* D’Souza Decl. ¶ 29. Therefore, the refinanced obligations will not benefit from substantially different collateral. *Id.*

51. *Third*, the proposed Prepetition Debt Refinancing does not affect the Debtors’ debt service costs, in the aggregate, relative to the scenario in which none of the Prepetition Secured Debt was refinanced. *Id.* Pursuant to the Adequate Protection Obligations, the Debtors have agreed to make payments to the Prepetition Secured Parties equal to the current debt service payments on the Prepetition Secured Debt. Absent the Prepetition Debt Refinancing, the Debtors would continue to make such payments in respect of the Prepetition Term Loans and Prepetition Letters of Credit to be refinanced.

52. Finally, roll-ups and repayments of prepetition debt, such as the Prepetition Debt Refinancing of the Prepetition Term Loans—which remain subject to the Challenge rights—are a common feature of debtor-in-possession financings and have been approved in a variety of cases,

including pursuant to interim financing orders. *See In re Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del. Jan. 17, 2019) (D.I. 222) (approving in final order the “roll-up” of prepetition term loans owed to lenders under debtor-in-possession financing facility); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (D.I. 68) (approving in interim order the “roll-up” of prepetition bridge term loan); *In re The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (D.I. 120) (approving in interim order the “roll-up” of all outstanding prepetition revolving obligations); *In re Charming Charlie LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) (D.I. 93) (approving in interim order the “roll-up” of all outstanding prepetition revolving obligations); *In re American Apparel, Inc.*, No. 15-12055 (BLS) (Bankr. D. Del. Oct. 6, 2015) (D.I. 80) (approving in interim order the payment in full of all outstanding prepetition revolving obligations); *In re RadioShack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 10, 2015) (D.I. 190) (approving “roll-up” of prepetition debt).

II. The Debtors Should Be Authorized to Use the Cash Collateral

53. The Debtors should be permitted to use Cash Collateral pursuant to section 363(c)(2) of the Bankruptcy Code, which provides, in relevant part, that a debtor “may not use, sell, or lease cash collateral . . . unless: (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code further provides that “on request of an entity that has an interest in property . . . to be used, sold, or leased by the trustee, the court . . . shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” *Id.* § 362(e).

54. The Adequate Protection Obligations, described above, are intended to protect the Prepetition Secured Parties from any diminution in the value of their interests in the Prepetition Collateral resulting from the Debtors' use thereof during the pendency of the Chapter 11 Cases.

55. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985) (“[S]uch matters are [to be] left to case-by-case interpretation and development.” (brackets in original) (quotations omitted)). That said, it is clear that the adequate protection offered here is traditional, appropriate, and routinely granted. *See, e.g.,* Final Order at 18, 21-26, *In re Offshore Grp. Inv. Ltd.*, No. 15-12422 (BLS) (Bankr. D. Del. Jan. 8, 2016) (E.I. 158) (granting prepetition secured parties adequate protection liens, superpriority claims subject to a carve out, fees and expenses, and requiring that the debtors deliver certain financial reports and budget compliance documents); Interim Order at 11-21, *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Sep. 25, 2015) (E.I. 111-2) (granting certain prepetition secured parties adequate protection liens, superpriority administrative claims, fees and expenses, and adequate protection payments, and requiring the debtors to provide monthly rolling 13-week cash flow forecasts and other financial reports).

56. In light of the foregoing, the Debtors further submit that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are fair and appropriate under the circumstances to ensure that the Debtors are able to continue using the

Cash Collateral, subject to the terms and conditions set forth in the Interim Order, for the benefit of all parties in interest and the Debtors estates.

III. The DIP Agent and the DIP Lenders Should Be Afforded Good Faith Protection Under Section 364(e) of the Bankruptcy Code

57. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. 11 U.S.C. § 364(e). Section 364(e) of the Bankruptcy Code provides as follows:

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

Id.

58. The DIP Financing is the result of (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital post-petition financing and (b) extensive arm's length, good faith negotiations between the Debtors and the DIP Lenders. The Debtors submit that the terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Agent, the DIP Lenders, or any other party to the DIP Documents other than as described herein. Accordingly, the Court should find that the obligations arising under the DIP Facilities and other financial accommodations made to the Debtors have been extended by the DIP Agent and the DIP Lenders in "good faith" within

the meaning of section 364(e) of the Bankruptcy Code and, therefore, the DIP Agent and the DIP Lenders are entitled to all of the protections afforded thereby.

IV. The Automatic Stay Should Be Modified on a Limited Basis

59. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit (a) the Debtors to grant the liens and claims provided for under the DIP Facilities, (b) the Debtors to incur the liabilities and obligations contemplated in the DIP Documents, (c) the Debtors to pay all amounts required in accordance with the DIP Documents, (d) the DIP Secured Parties, subject to certain limitations, to exercise remedies upon the occurrence and during the continuation of an event of default under the DIP Documents, and (e) the DIP Secured Parties to implement all of the terms, rights, benefits, privileges, remedies, and provisions of the Interim Order and the DIP Documents, including allowing the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order.

60. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases. *See, e.g., In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019); *In re Eastern Outfitters, LLC*, Case No. 17-10243 (LSS) Bankr. D. Del. Feb. 8, 2017); *In re Basic Energy Servs., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016); *In re Verso Corp.*, Case No. 16-10163 (Bankr. D. Del. Jan. 27, 2016); *In re the Standard Register Co., et al.*, No. 15-10541 (BLS) (Bankr. D. Del. Apr. 16, 2015); *In re Cache, Inc. et al.*, No. 15-10172 (MFW) (Bankr. D. Del. May 20, 2015); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012); *In re Broadway*

401 LLC, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010); *In re Haight's Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010).

V. The Scope of the Carve-Out Is Appropriate

61. The DIP Financing and the Interim Order subject the security interests and administrative expense claims under the DIP Facilities and Adequate Protection Obligations to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any official committee appointed can reimburse their professionals in certain circumstances during an event of default under the terms of the debtor's post-petition financing. *See Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) ("Absent 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 the Chapter 11 Cases by ensuring that, notwithstanding the grant of superpriority claims and liens under the DIP Facilities and Adequate Protection Obligations, assets remain for the payment of the fees of the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") and professional fees of the Debtors and any official committee.

62. Courts in this district and others routinely approve carve-out provisions agreed to by the debtors and their post-petition lenders. *See, e.g., In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019); *In re Eastern Outfitters, LLC*, Case No. 17-10243 (LSS) (Bankr. D. Del. Feb. 8, 2017); *In re Modular Space Holdings, Inc.*, Case No. 16-12825 (KJC) (Bankr. D. Del. Dec. 22, 2016); *In re Basic Energy Servs., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016); *In re Halcón Resources Corp.*, Case No. 16-11724 (BLS) (Bankr. D. Del. July 29, 2016); *In re RCS Capital Corp.*, Case No. 16-10223 (MFW) (Bankr. D. Del. Feb.

3, 2016) *In re Verso Corp.*, Case No. 16-10163 (KG) (Bankr. D. Del. Jan. 27, 2016); *In re Swift Energy Co.*, Case No. 15-12670 (Bankr. D. Del. Jan. 5, 2016).

VI. Failure to Obtain Immediate Interim Access to the DIP Facilities Would Cause Immediate and Irreparable Harm

63. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

64. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to withdraw and borrow funds under the DIP Facilities. The Debtors will suffer immediate and irreparable harm if the Interim Order approving the DIP Facilities is not entered sooner than 14 days after service of the DIP Motion and if the Debtors are not permitted to interim access to \$30 million of the DIP New Money Facility and \$55 million of DIP L/C Sub-Facility. The Debtors require access to the DIP New Money Facility prior to the Final Hearing and entry of the Final Order in order to continue operating, to pay their administrative expenses and to implement the relief requested in the Debtors' other "first day" motions. This relief is necessary for the Debtors to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest.

Request for Final Hearing

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

Necessity of Immediate Relief

66. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. Here, the Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that failure to receive the requested relief during the first 14 days of the Chapter 11 Cases would severely disrupt the Debtors’ operations at this critical juncture. Without the proceeds of the DIP Financing, the Debtors may not be able to fund employee payroll, pay their vendors or maintain the value of their businesses. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

Debtors’ Reservation of Rights

67. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors’ rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the DIP Facilities under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended, and should not be construed, as an admission as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

Waiver of Stay Under Bankruptcy Rule 6004(h)

68. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

69. Notice of this Motion will be provided to (a) the U.S. Trustee, (b) each of the Debtors’ 20 largest unsecured creditors on a consolidated basis, (c) Vinson & Elkins LLP, as counsel to the Prepetition Revolving Agent, (d) Arnold & Porter Kaye Scholer LLP, as counsel to the Prepetition Term Agent, (e) Willkie Farr & Gallagher LLP, and Young Conaway Stargatt & Taylor, LLP as counsel to the post-petition lenders and Ad Hoc Group, (f) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP and its non-Debtor subsidiaries, (g) the Securities and Exchange Commission, (h) the Internal Revenue Service, and (i) the United States Attorney’s Office for the District of Delaware (collectively, the “**Notice Parties**”).

70. Notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). A copy of this Motion and any order approving it will also be made available on the Debtors’ case information website located at <http://www.kccllc.net/southcrossenergy>.

71. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

No Prior Request

72. The Debtors have not previously sought the relief requested herein from the Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 1, 2019
Wilmington, Delaware

Respectfully submitted,
MORRIS, NICHOLS ARSHT & TUNNELL LLP

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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Interim Order

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

In re:

SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*,

Debtors.¹

)

) Chapter 11

)

) Case No. 19-10702 (MFW)

)

) (Joint Administration Requested)

)

**INTERIM ORDER, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506,
AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR
SECURED SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING
LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS,
(III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING
ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY,
(VI) SCHEDULING FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**” or the “**Borrower**”), Southcross Energy Partners GP, LLC (“**Southcross GP**”), and Southcross’s direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy**

¹ The debtors and debtors in possession in these Chapter 11 Cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5200, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms further below in this Interim Order, the DIP Documents, or the Motion, as applicable (as such terms are defined herein).

Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of interim and final orders, among other things:

- (i) authorizing the Borrower to obtain, and the Borrower’s Debtor subsidiaries (collectively, in their capacity as such, the “**Guarantors**” and, together with the Borrower, the “**Loan Parties**”) to guaranty, debtor-in-possession credit financing in an aggregate principal amount of up to \$255 million (the “**DIP Financing**”) to be funded by certain of the Prepetition Term Lenders (in their capacity as lenders under the DIP Facilities, the “**DIP Lenders**”) under a secured term loan and letter of credit facility (the “**DIP Facility**”) consisting of (A) new money term loans (the “**DIP Term Loans**”) in an aggregate principal amount of up to \$72.5 million, (B) letter of credit term loans (the “**DIP LC Loans**”) in an aggregate principal amount of up to \$55 million, the proceeds of which will be used to cash collateralize letters issued (or deemed issued) under a letter of credit sub-facility in an aggregate principal amount of up to \$55 million (the “**DIP L/C Sub-Facility**”) and (C) roll-up term loans (the “**DIP Roll-Up Loans**” and, together with the DIP Term Loans and the DIP LC Loans, the “**DIP Loans**”), which shall be subject and subordinate to the DIP Term Loans and DIP LC Loans, to refinance dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of \$127.5 million;
- (ii) authorizing the Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Superpriority Secured Debtor-in-Possession Credit Agreement, among the Loan Parties, the DIP Lenders, certain Prepetition Revolving Lenders, as issuers of DIP Letters of Credit (the “**DIP L/C Issuers**”), and Wilmington Trust, National Association, as administrative and collateral agent (collectively, solely in such capacities, the “**DIP Agent**” and, together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached hereto as Exhibit A (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget (including any permitted variances), the “**DIP Documents**”) and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;
- (iii) granting to the DIP Agent, for the benefit of the DIP Lenders, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the Carve-Out and the Permitted Senior

Liens, to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;

- (iv) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the Loan Parties' estates and all proceeds thereof (other than Avoidance Actions, but, upon entry of the Final Order, including Avoidance Proceeds), subject to the Carve-Out and the Permitted Senior Liens;
- (v) authorizing the Loan Parties (A) upon entry of this Interim Order, to incur in a single draw on the Closing Date, DIP Term Loans in an aggregate principal amount of up to \$30 million (the "**Initial DIP Term Loans**") and DIP LC Loans in an aggregate principal amount of up to \$55 million (the incurrence of such loans upon entry of this Interim Order, the "**Interim Financing**") and (B) upon entry of the Final Order, to incur in a single draw on or within 30 days after the entry of the Final Order, DIP Term Loans in an aggregate principal amount of \$42.5 million (the "**Delayed Draw DIP Loans**"), in each case subject to the terms and conditions set forth in the DIP Documents, this Interim Order, and the Final Order;
- (vi) authorizing the Debtors (A) upon entry of this Interim Order, to use proceeds of the DIP LC Loans to cash collateralize (in the amount of 103% of the face amount) the DIP Letters of Credit and to deem the Prepetition the Letters of Credit to be cancelled and reissued under the DIP L/C Sub-Facility (the "**Prepetition L/C Refinancing**") and (B) upon entry of the Final Order, to use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount of \$127.5 million (the "**Prepetition Term Loan Refinancing**" and, together with the Prepetition L/C Refinancing, the "**Prepetition Debt Refinancing**");
- (vii) authorizing the Debtors' use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and other the DIP Documents, including the Approved Budget (subject to permitted variances);
- (viii) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget and permitted variances thereunder) and all other Prepetition Collateral, and the granting of the Adequate Protection Obligations to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);
- (ix) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Collateral as set forth herein;

- (x) modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and Final Order; and
- (xi) scheduling a final hearing (the “**Final Hearing**”), to be held within 30 days after the Petition Date, to consider entry of the Final Order approving the DIP Facilities and use of Cash Collateral, as set forth in the DIP Motion and the DIP Documents; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion, the D’Souza Declaration and the Howe Declaration; and the Court having held an interim hearing on the Motion (the “**Interim Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

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

A. *Petition Date.* On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “**Court**”) commencing the Chapter 11 Cases.

B. *Debtors in Possession.* The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. *Committee Formation.* As of the date hereof, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed a statutory committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (if appointed, a “**Committee**”).

D. *Jurisdiction and Venue.* The Court has core jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

the Chapter 11 Cases and related proceedings is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. *Notice.* The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and under the circumstances, no other or further notice of the Motion or the entry of this Interim Order shall be required, except as set forth in paragraph 38 below. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

F. *Debtors' Stipulations.* After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest (subject to the limitations thereon contained in paragraphs 20 and 21 below), the Debtors acknowledge, admit, stipulate and agree that:

(i) Prepetition Revolving Credit Facility. Pursuant to that certain Third Amended & Restated Revolving Credit Agreement, dated as of August 4, 2014 and amended six times through August 10, 2018 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**Prepetition Revolving Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the “**Prepetition Revolving Facility Documents**”), among Southcross, as borrower, Wells Fargo Bank, National Association, as administrative agent (in such capacity, the “**Prepetition Revolving Agent**”), and the lenders party thereto (the “**Prepetition Revolving Lenders**” and, together with the Prepetition Revolving Agent, the “**Prepetition Revolving Secured Parties**”), the

Prepetition Revolving Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, Southcross (the “**Prepetition Revolving Facility**”), which Prepetition Revolving Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(ii) Prepetition Revolving Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Revolving Secured Parties, without defense, counterclaim, or offset of any kind, in respect of (a) outstanding loans in the aggregate principal amount of not less than \$81.1 million, (b) undrawn Letters of Credit (as defined in the Prepetition Revolving Credit Agreement) (the “**Prepetition Letters of Credit**”) in the amount of not less than \$25.9 million, and (c) three Secured Hedging Agreements (as defined in the Prepetition Revolving Credit Agreement) with a notional value of not less than \$275 million, pursuant to and in accordance with the terms of, the Prepetition Revolving Facility Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Revolving Facility Documents, the “**Prepetition Revolving Debt**”).

(iii) Prepetition Term Facility. Pursuant to that certain Term Loan Credit Agreement, dated as of August 4, 2014 (as amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**Prepetition Term Loan Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the “**Prepetition Term Facility Documents**”), among Southcross, as borrower, Wilmington Trust, N.A., as successor administrative agent (in such capacity,

the “**Prepetition Term Agent**” and, together with the Prepetition Revolving Agent, the “**Prepetition Agents**”), and the lenders party thereto (the “**Prepetition Term Lenders**” and, together with the Prepetition Term Agent, the “**Prepetition Term Secured Parties**” and, together with the Prepetition Revolving Secured Parties, the “**Prepetition Secured Parties**”), the Prepetition Term Lenders provided term loans to Southcross (the “**Prepetition Term Facility**” and, together with the Prepetition Revolving Facility, the “**Prepetition Secured Credit Facilities**”), which Prepetition Term Facility has been guaranteed on a joint and several basis by each of the Guarantors.

(iv) Prepetition Term Debt. As of the Petition Date, the Borrower and the Guarantors were justly and lawfully indebted and liable to the Prepetition Term Secured Parties, without defense, counterclaim or offset of any kind, in respect of loans (the “**Prepetition Term Loans**”) in the aggregate principal amount of not less than \$429,140,515.29, pursuant to and in accordance with the terms of the Prepetition Term Facility Documents (collectively, such indebtedness together with accrued and unpaid interest thereon and fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided therein, the “**Prepetition Term Debt**” and, together with the Prepetition Revolving Debt, the “**Prepetition Secured Debt**”).

(v) Validity of Prepetition Secured Debt. (a) The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Borrower and the Guarantors, enforceable in accordance with the terms of the Prepetition Secured Debt Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Secured Debt or any payments made to the Prepetition Secured Parties or applied to or paid on account of the

obligations owing under the Prepetition Secured Debt Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(vi) Prepetition Liens. The liens and security interests granted to the Prepetition Secured Parties (the “**Prepetition Liens**”), pursuant to and in connection with the Prepetition Secured Debt Documents, are (a) valid, binding, perfected, enforceable liens and security interests in the Shared Collateral (as defined in the Intercreditor Agreement) (the “**Prepetition Collateral**”), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to Permitted Senior Liens permitted under the Prepetition Secured Debt Documents.

(vii) No Control. None of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Secured Debt Documents.

(viii) No Claims or Causes of Action. No claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Prepetition Secured Parties under any agreements by and among the Debtors and any such party that is in

existence as of the Petition Date, whether related to the Prepetition Secured Debt Documents, any other agreement, the Debtors or otherwise.

G. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Interim Order.

(ii) The Loan Parties have an immediate and critical need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code (“**Cash Collateral**”)), in each case on an interim basis, in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to administer these Chapter 11 Cases, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to satisfy other working capital and operational needs. The access of the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Loan Parties and to a successful reorganization of the Loan Parties.

(iii) The Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured

credit allowable under section 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims and incurring the Adequate Protection Obligations, in each case subject to the Carve-Out and the terms and conditions set forth in this Interim Order and in the DIP Documents.

(iv) Based on the Motion, the Howe Declaration, the D’Souza Declaration, and the record presented to the Court at the Interim Hearing, the terms of the DIP Financing and the terms on which the Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the Loan Parties’ exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(v) Absent order of the court and the provision of adequate protection, consent of the Prepetition Secured Parties is required to the Loan Parties’ use of Cash Collateral and the other Prepetition Collateral. The Prepetition Secured Parties have consented, are deemed, pursuant to that certain Intercreditor Agreement, dated as of August 4, 2014, by and among Southcross, the Prepetition Agents, and the other grantors party thereto (the “**Intercreditor Agreement**” and, together with the Prepetition Revolving Facility Documents and the Prepetition Term Facility Documents, the “**Prepetition Secured Debt Documents**”), to have consented or have not objected to the Loan Parties’ use of Cash Collateral and the other Prepetition Collateral, and the Loan Parties’ entry into the DIP Documents solely in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

(vi) The DIP Financing and the use of the Prepetition Collateral have been negotiated in good faith and at arm's length among the Loan Parties and the DIP Secured Parties, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all "Obligations" (as defined in the DIP Documents), in each case owing to the DIP Secured Parties or any of their respective banking affiliates (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(vii) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Loan Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e), as may be applicable, of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral are fair and reasonable, reflect the Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Intercreditor Agreement, to seek new, different, or additional adequate protection for any diminution in value of their interests in the Prepetition Collateral from and after the Petition Date or assert the interests of any of the Prepetition Secured Parties and the rights of any other party in interest to object to such relief are hereby preserved.

(ix) Use of the DIP LC Loans, upon entry of the Interim Order, to cash collateralize all Letters of Credit (in the amount of 103% of the face amount) and use of the DIP Roll-Up Loans, upon entry of the Final Order and the funding of the Delayed Draw DIP Term Loans, to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided by such

DIP Lenders under the DIP Facility) reflects the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties.

(x) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Loan Parties' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of the Prepetition Collateral (including Cash Collateral) in accordance with this Interim Order and the DIP Documents are, therefore, in the best interests of the Loan Parties' estates and consistent with the Loan Parties' exercise of their fiduciary duties.

H. *Permitted Senior Liens; Continuation of Prepetition Liens.* Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Senior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Senior Lien and is expressly subject to the DIP Liens. The Prepetition Liens, and the DIP Liens that prime the Prepetition Liens, are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facilities, the DIP Documents, and the Prepetition Secured Debt Documents.

I. *Immediate Entry.* Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2).

IT IS HEREBY ORDERED THAT:

1. *Interim Financing Approved.* The interim relief requested in the Motion is granted and the use of Cash Collateral on an interim basis, the Interim Financing and the Prepetition L/C Refinancing are authorized and approved, in each case in accordance with the terms and conditions set forth in the DIP Documents, the Approved Budget (including any permitted variances) and this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

2. *Authorization of the DIP Financing and the DIP Documents.*

(a) The Loan Parties are hereby authorized to execute, deliver, enter into and, as applicable, perform all of their obligations under the DIP Documents and such other and further acts as may be necessary, appropriate, or desirable in connection therewith, in each case in accordance with and subject to the terms of this Interim Order and the DIP Documents. The Borrower is hereby authorized to borrow money and obtain letters of credit pursuant to the DIP Credit Agreement, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to pay certain costs, fees, and expenses related to the Chapter 11 Cases, to pay the Adequate Protection Payments, to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit), and to fund working capital and for general corporate purposes of the Loan Parties during the Chapter 11 Cases, in each case, subject to the Approved Budget (including any permitted variances) and in accordance with this

Interim Order and the DIP Documents and the Guarantors are hereby authorized to guaranty the DIP Obligations.

(b) In furtherance of the foregoing and without further approval of the Court, each Debtor is authorized to perform all acts, to make, execute, and deliver all instruments, certificates, agreements, and documents (including, without limitation, the execution or recordation of security agreements, mortgages, and financing statements), and to pay all fees in connection with or that may be reasonably required, necessary, or desirable for the Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the Loan Parties, the DIP Agent and the requisite DIP Lenders and (if required under the DIP Documents) the DIP L/C Issuers may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses, amounts, charges, costs, indemnities, and other obligations paid in connection therewith) that do not (A) shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, (B) increase existing fees or add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee), or (C) shorten the

case milestones set forth in Section 8.23 of the DIP Credit Agreement. The foregoing shall be without prejudice to the Loan Parties' right to seek approval from the Court of any material modification or amendment on an expedited basis;

(iii) the non-refundable payment to the DIP Agent and/or the DIP Lenders, as the case may be, of all reasonable and documented fees (which fees shall be, and shall be deemed to have been, approved upon entry of this Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents (and in any separate letter agreements between any or all of the Loan Parties, on the one hand, and any of the DIP Secured Parties, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and DIP Lenders, in each case, as provided for in the DIP Documents, whether or not such fees or expenses arose prior to or after the Petition Date without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts necessary, appropriate, or desirable under or in connection with the DIP Documents.

3. *Prepetition Debt Refinancing.* Upon entry of this Interim Order, in accordance with paragraph 9 below, the Debtors are hereby authorized to use the proceeds of the DIP LC Loan to cash collateralize the Prepetition Letters of Credit (in the amount of 103% of the face amount of issued and outstanding Prepetition Letters of Credit) and the Prepetition Letters of Credit will be deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit under the DIP L/C Sub-Facility. Upon entry of the Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge the DIP Lenders' Prepetition Term Loans (in an amount equal to the DIP Term Loans and DIP LC Loans provided and/or committed to under the DIP New Money Facility), in each case subject to the terms and conditions set forth in the DIP Documents and the reservation of rights of parties in interest in paragraph 18 below. Upon expiration of the Challenge Period without a successful Challenge having been brought with respect thereto, the DIP Roll-Up Loans issued under this paragraph 3 shall be deemed indefeasible and the Prepetition Secured Debt refinanced thereby shall be discharged. Notwithstanding anything to the contrary herein or in the Intercreditor Agreement (as may be amended and/or modified from time to time after the Petition Date),

(x) the claims and liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the claims and liens in respect of the DIP LC Loans and the DIP Term Loans in all respects, and

(y) the claims and liens in respect of the DIP Roll-Up Loans shall be *pari passu* with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; *provided* that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition

Term Loans shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

4. *DIP Obligations.* Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the Loan Parties, enforceable against each Loan Party thereto in accordance with the terms of the DIP Documents and this Interim Order as of the date of the entry of this Interim Order. No obligation, payment, transfer or grant of security to the DIP Secured Parties under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d), 544, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, claim, or counterclaim.

5. *Carve-Out.*

(a) As used in this Interim Order, the “**Carve-Out**” shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens (other than DIP Liens in the Cash Collateral securing DIP Letters of Credit), the 507(b) Claims, and the Adequate Protection Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed \$50,000 (without regard to the Carve-Out Trigger Notice); (iii) to the extent allowed by the Court at any time, whether by interim order, procedural order or otherwise, all unpaid fees and expenses

(the “**Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”), at any time on or before the first business day following the earlier of (a) delivery by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) of a Carve-Out Trigger Notice and (b) the Maturity Date (as defined in the DIP Credit Agreement) (such day, the “**Carve-Out Trigger Date**”), whether allowed by the Court prior to or after the Carve-Out Trigger Date; and (iv) Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed \$4,000,000 (the “**Post Trigger Date Carve-Out Amount**”); *provided* that any success, completion, or similar fees payable from the Post-Trigger Date Carve-Out Amount shall be subject and subordinate, and junior in right of payment, to all other Professional Fees payable from the Post-Trigger Date Carve-Out (collectively, the “**Carve-Out Amount**”), in each case subject to the limits imposed by the DIP Orders. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email by the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) to the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an “Event of Default” under the DIP Documents (an “**Event of Default**”), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(b) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the Approved Budget) to pay Professional Fees that are authorized

to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Chapter 11 Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out Amount. Any payment or reimbursement made after the Carve-Out Trigger Date on account of Professional Fees incurred after the Carve-Out Trigger Date shall permanently reduce the Carve-Out on a dollar-for-dollar basis, *provided* that the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with the restricted uses thereof set forth in paragraph 20.

(c) Immediately upon the Carve-Out Trigger Date, and prior to the payment of any DIP Secured Party or Prepetition Secured Party on account of adequate protection, the Debtors shall fund a reserve in an amount equal to the Carve-Out Amount (the “**Carve-Out Reserve**”) from all cash on hand (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit as of such date, and, including any available cash thereafter held by any Debtor (exclusive of any cash utilized to cash collateralize the Prepetition Letters of Credit in connection with the Prepetition L/C Refinancing)). The Carve-Out Reserve shall be held for the benefit of the Debtors in a segregated non-interest bearing account at the DIP Agent or another financial institution agreed to by the Borrower and the Required Lenders (as defined in the DIP Credit Agreement) in trust to pay the Professional Fees and other obligations benefiting from the Carve-Out and the Carve-Out Reserve shall be available only to satisfy such obligations benefiting from the Carve-Out until paid in full; *provided* that the DIP Agent shall follow the instructions of the Debtors with respect to

the disbursement of the Carve-Out Reserve consistent with the provisions of this Interim Order; *provided further* that the DIP Agent shall not be liable to any Professional Person or any other person or entity with respect to the Carve-Out Reserve held at the DIP Agent, and all actions (or inactions) by the DIP Agent related thereto shall be exculpated by all such parties, except in the event a court of competent jurisdiction determines that the DIP Agent breached its obligations under this Interim Order by not following an instruction of the Debtors that was consistent with the provisions of this Interim Order with respect to the Carve-Out Reserve; *provided further*, that, to the extent the Carve-Out Reserve has not been reduced to zero after the payment in full of such obligations, it shall be used to pay the DIP Agent for the benefit of the DIP Secured Parties until the DIP Obligations have been indefeasibly paid in full in cash and all DIP Commitments have been terminated. Notwithstanding anything to the contrary herein, the Prepetition Agents and the DIP Agent, each on behalf of itself and the relevant secured parties, (y) shall not sweep or foreclose on the Carve-Out Reserve and (z) shall have a security interest upon any residual interest in the Carve-Out Reserve, available following satisfaction in cash in full of all obligations benefitting from the Carve-Out, and the priority of such lien on the residual shall be consistent with this Interim Order. Further, notwithstanding anything to the contrary herein, (A) the failure of the Carve-Out Reserve to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out and (B) in no way shall the Carve-Out, the Post-Trigger Date Carve-Out Amount, the Carve-Out Reserve, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors.

(d) Notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to the DIP Obligations, the DIP Superpriority Claims, the DIP Liens (other than the DIP Liens in the Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), the Adequate Protection Obligations, the 507(b) Claims, the Adequate Protection Liens, and all other liens and claims granted under this Interim Order, the DIP Documents, or otherwise securing or in respect of the DIP Obligations or the Adequate Protection Obligations.

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

7. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Loan Parties (without the need to file any proof of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which

allowed claims (the “**DIP Superpriority Claims**”) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Loan Parties and all proceeds thereof (excluding the Loan Parties’ claims and causes of action under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, the “**Avoidance Actions**”), but including, upon entry of the Final Order, any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise (“**Avoidance Proceeds**”), subject only to the liens on such property, the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Adequate Protection Claims; *provided* that the DIP Superpriority Claims in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Superpriority Claims in respect of the DIP Term Loans and the DIP LC Loans.

8. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of the Petition Date and without the necessity of the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements, notations on certificates of title for titled goods or other similar documents, or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders

(all property identified in clauses (a) through (c) below being collectively referred to as the “**DIP Collateral**”, subject to the Carve-Out and in each case in accordance with the priorities set forth in the table below (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all tangible and intangible prepetition and post-petition property of the Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien (collectively, “**Unencumbered Property**”), including, without limitation, any and all unencumbered cash of the Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, letter-of-credit rights, investment property and support obligations, commercial tort claims, all books and records pertaining to the property described in this paragraph, all property of the Loan Parties held by any DIP Secured Party, all other goods (including but not limited to fixtures) and personal property of the Loan Parties, whether tangible or intangible and wherever located, Avoidance Proceeds (following entry of the Final Order), capital stock of subsidiaries,

wherever located, and, to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Excluded Property (as defined in the DIP Documents) and Avoidance Actions, but including any proceeds of Excluded Property that do not otherwise constitute Excluded Property.

(b) Liens Priming Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority priming security interest in and lien upon all Prepetition Collateral and DIP Collateral (wherever located and the proceeds, products, rents and profits thereof), subject and subordinate only to the Permitted Senior Liens, but senior in all respects to the Prepetition Liens and the Adequate Protection Liens (any such liens primed pursuant to this clause (b), the “**Primed Liens**”); *provided* that the DIP Liens in respect of the DIP Roll-Up Loans shall remain subject to the Intercreditor Agreement except that any proceeds allocated thereunder on account of the DIP Roll-Up Loans or the Prepetition Term Debt shall be applied first to the repayment in full of the DIP Roll-Up Loans before being applied to any Prepetition Term Debt.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Loan Parties (wherever located, and the proceeds, products, rents, and profits thereof) immediately junior to (i) valid, perfected, and non-avoidable liens (other than Primed Liens) in

existence immediately prior to the Petition Date, (ii) valid non-avoidable liens (other than Primed Liens) that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and (iii) the liens in favor of the DIP L/C Issuers in respect of the Cash Collateral Accounts, securing the Loan Parties' obligations under the DIP Letters of Credit (the liens described in the foregoing clause (i) through (iii), the "**Permitted Senior Liens**"); *provided* that nothing in this paragraph (c) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent the liens described in the foregoing clause (i) or (ii) are not permitted thereunder.

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (C) any intercompany or affiliate liens or security interests of the Loan Parties or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(e) Relative Priority of DIP Liens. Notwithstanding anything to the contrary herein, the DIP Liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the DIP Liens in respect of the DIP Term Loans and the DIP LC Loans in all respects.

(f) For the avoidance of doubt, any DIP Liens on DIP Collateral relating to real property of the Debtors granted pursuant to this paragraph 8 shall include, for the ratable benefit of the related DIP Secured Parties, in each case to the extent constituting DIP Collateral, all of each Debtor's right, title and interest now or hereafter acquired in and to all land, together with the buildings, structure, parking areas, and other improvements thereon, now or hereafter owned by any Debtor, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof, and (a) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, (b) all reserves, escrows or impounds and all deposit accounts maintained by each Debtor with respect to such real estate, (c) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any person a possessory interest in, or the right to use, all or any part of such real estate, together with all related security and other deposits, (d) all of the rents, revenues, royalties, income proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying such real estate, (e) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of such real estate, (f) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining to the foregoing, (g) all

property tax refunds payable with respect to such real estate, (h) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by each Debtor as an insured party, and (j) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made to any Debtor by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any such real estate.

9. *Establishment of Cash Collateral Accounts; Maintenance of Letters of Credit.*

(a) In order to cash collateralize the new letters of credit issued and the Prepetition Letters of Credit deemed issued (the “**DIP Letters of Credit**”) under the DIP L/C Sub-Facility, in accordance with the DIP Documents and this Interim Order, the Loan Parties shall, and are hereby authorized to, deposit as a single installment in cash into one or more non-interest-bearing cash collateral accounts established with the DIP Agent (the “**Cash Collateral Accounts**”) the proceeds of the DIP LC Loans, which shall cash collateralize the DIP Letters of Credit in the amount of 103% of the face amount of issued and outstanding DIP Letters of Credit. The amounts on deposit in the Cash Collateral Accounts shall be subject to (y) a first-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP L/C Issuers, securing the obligations of the Loan Parties under the DIP Letters of Credit, and (z) subject to the Carve-Out, a second-priority security interest and lien in favor of the DIP Agent for the benefit of the DIP Secured Parties, securing the other DIP Obligations.

(b) The Loan Parties are authorized to renew DIP Letters of Credit issued under the DIP L/C Sub-Facility on an uninterrupted basis and to take all actions reasonably appropriate with respect thereto on an uninterrupted basis. Without limitation of the foregoing, upon entry of this Interim Order, the Prepetition Letters of Credit shall be deemed to have been cancelled and reissued as DIP Letters of Credit in their full amounts and without modification of the terms of the Prepetition Letters of Credit other than their deemed issuance as DIP Letters of Credit issued under the DIP L/C Sub-Facility. The DIP L/C Issuers shall be authorized to apply any Cash Collateral held against the amount of any draw on any DIP Letter of Credit, and reducing the DIP L/C Sub-Facility by such amount so applied, without notice of any kind or further order or action by the Court and the automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP L/C Issuers to so apply any such Cash Collateral in the Cash Collateral Accounts. All issued and outstanding DIP Letters of Credit shall be cash collateralized at 103% of the face amount thereof and shall be deemed to be secured by Priority DIP Financing Liens (as defined in the Intercreditor Agreement) and the Cash Collateral advanced as DIP LC Loans under the DIP Facility. The DIP Letters of Credit shall remain cash collateralized as set forth herein at all times, and except as provided below with respect to Alternate Cash Collateral (as defined below), the Debtors shall have no right to use the Cash Collateral Accounts securing the DIP Letters of Credit, and such cash collateralization shall not be subject to any reduction by any chapter 11 plan, order of the Court, or otherwise; *provided that*, subject to the terms and conditions (including in section 9.03(j) of the DIP Credit Agreement) of the DIP Documents, the Borrower shall have the right to withdraw

proceeds on deposit in the Cash Collateral Accounts (which shall be accompanied by corresponding reduction in the DIP L/C Sub-Facility by such amount so withdrawn) in an amount up to the “Alternate Cash Collateral Amount” (as defined in the DIP Credit Agreement) to cash collateralize customer and/or supplier obligations (such cash collateral, the “**Alternate Cash Collateral**”) in lieu of issuing Letters of Credit.

(c) To the extent there exists or comes to exist any cash of the Debtors’ estates that is not Cash Collateral, wherever located and however held, such cash shall be deemed to have been used first by the Debtors’ estates and such cash, to the extent applicable, shall be subject to the DIP Liens and DIP Superpriority Claims granted to the DIP Lenders hereunder.

10. *Protection of DIP Lenders’ Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (as defined in the DIP Documents) (the “**DIP Commitments**”) under the DIP Documents, the Prepetition Secured Parties shall (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Secured Debt Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral, including in connection with the Adequate Protection Liens, (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents, and (iii) not file any further financing statements, trademark filings,

copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Collateral unless, solely as to this clause (iii), the DIP Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral or DIP Collateral that is subject to a DIP Lien, then such Prepetition Secured Party shall be deemed to maintain such possession or exercise such control as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Secured Parties and shall comply with the instructions of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) with respect to the exercise of such control.

(c) Any proceeds of Prepetition Collateral subject to the Primed Liens received by any Prepetition Secured Parties, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by either of the Prepetition Agents, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements. Notwithstanding the foregoing, the rights of setoff and first priority security interests of the financial institutions providing cash management services (solely to the extent related to cash

management obligations and as governed by the cash management order entered in these Chapter 11 Cases) are preserved.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the DIP Documents and (i) immediately upon the occurrence of an Event of Default, to declare (A) the termination, reduction, or restriction of any further DIP Commitment to the extent any such DIP Commitment remains and (B) all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Loan Parties, and (ii) unless the Court orders otherwise during the Remedies Notice Period, upon the occurrence of an Event of Default and the giving by the DIP Agent of five business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents) (the "**Remedies Notice Period**") delivered by email to the Debtors' lead restructuring counsel (with a copy to the Committee, if any, and the U.S. Trustee), (A) to withdraw consent to the Loan Parties' continued use of any Cash Collateral or (B) to exercise all other rights and remedies provided for in the DIP Documents and under applicable law; *provided* that, during the Remedies Notice Period, the Loan Parties shall be permitted to continue to use Cash Collateral in the ordinary course of business (subject to the Approved Budget and any permitted variance) and may request an expedited hearing before the Court to determine whether an Event of Default has occurred and is continuing and/or seek nonconsensual use of Cash Collateral. Subject to entry of the Final Order, in no event shall (y) the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any

similar doctrine with respect to the DIP Collateral or (z) the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply with respect to the secured claims of the Prepetition Secured Parties or the Prepetition Liens.

(e) No rights, protections, or remedies of the DIP Secured Parties granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified, or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Loan Parties’ authority to continue to use Cash Collateral, (ii) any actual or purported termination of the Loan Parties’ authority to continue to use Cash Collateral, or (iii) the terms of any other order or stipulation related to the Loan Parties’ continued use of Cash Collateral or the provision of adequate protection to any party.

11. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) or the applicable Prepetition Agent (acting upon the express prior written direction of the Required Lenders (as defined in the Prepetition Revolving Credit Agreement or the Prepetition Term Loan Credit Agreement, as applicable)), as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP

Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment, or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

12. *Payments Free and Clear.* Subject to the Carve-Out, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties pursuant to the provisions of this Interim Order or the DIP Documents shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, and subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through, or on behalf of the Debtors) or 552(b) of the Bankruptcy Code.

13. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the Approved Budget (including any permitted variances) and the terms and conditions of this Interim Order, to use all Cash Collateral.

14. *Adequate Protection of Prepetition Secured Parties.* The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' prepetition security interests in the Prepetition Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, but not limited to, the Debtors' use, sale or lease of Cash Collateral and other Prepetition Collateral, the imposition of the automatic stay and/or the Carve-Out (the "**Adequate Protection Claims**"); *provided* that the avoidance of any Prepetition Secured Party's interests in Prepetition Collateral shall not constitute diminution in the value of such Prepetition Secured Party's interests in Prepetition

Collateral. In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens. Each of the Prepetition Revolving Agent (for itself and for the benefit of the Prepetition Revolving Lenders) and the Prepetition Term Agent (for itself and for the benefit of the Prepetition Term Lenders) is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of its respective Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon (the “**Adequate Protection Liens**”) the DIP Collateral (including, without limitation, upon entry of the Final Order, the Avoidance Proceeds), which Adequate Protection Liens shall secure the respective Adequate Protection Claims, and in each case shall be (i) *pari passu* with each other Adequate Protection Lien granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the DIP Liens, and the Permitted Senior Liens; *provided* that the DIP Roll-Up Loans shall be *pari passu* with the Prepetition Revolving Debt in all respects such that distributions on the Prepetition Revolving Debt are pro rata with the sum of the DIP Roll-Up Loans and the Prepetition Term Loans; *provided* that any proceeds allocated on account of the DIP Roll-Up Loans and the Prepetition Term Loans (including in respect of the Adequate Protection Obligations) shall be applied first to the repayment of the DIP Roll-Up Loans before any Prepetition Term Loan.

(b) 507(b) Claims. Each of the Prepetition Agents (on behalf of the applicable Prepetition Secured Parties) are hereby granted an allowed superpriority

administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of their respective Adequate Protection Claims with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “**507(b) Claims**”), which 507(b) Claims (subject to DIP Liens and DIP Superpriority Claims) shall have recourse to and be payable from all of the DIP Collateral (including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). The 507(b) Claims shall be (i) *pari passu* with each other 507(b) Claim granted hereunder, subject to the Intercreditor Agreement, and (ii) subject and subordinate only to the Carve-Out, the DIP Superpriority Claims, the DIP Liens, and the Permitted Senior Liens. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Cash Payments. In each case subject to reallocation or recharacterization as payment of principal under section 506(a) and (b) of the Bankruptcy Code as may be ordered by the Court in connection with a timely and successful Challenge pursuant to paragraph 19 or 21 below, until the indefeasible discharge of the Prepetition Secured Debt, the Prepetition Agents, for the benefit of the applicable Prepetition Secured Parties, shall receive current payment in cash on the last business day of each month in an amount equal to the sum of all post-petition unpaid

interest accruing on all outstanding principal, interest, fees, and other amounts owing under the applicable Prepetition Secured Debt (as of the Petition Date), in each case at the applicable default rate (the payments in this subparagraph (c), the “**Adequate Protection Payments**”).

(d) Prepetition Secured Parties Fees and Expenses. The Loan Parties shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Agents or the Ad Hoc Group in connection with the Chapter 11 Cases (limited, in the case of the advisors to the Prepetition Term Lenders that are members of the Ad Hoc Group, to Houlihan Lokey, Inc., Willkie Farr & Gallagher LLP, Young Conaway Stargatt & Taylor, LLP, and one local counsel in each material jurisdiction; in the case of the advisors to the Prepetition Revolving Agent and the Prepetition Revolving Lenders, to RPA Advisors, LLC, Vinson & Elkins LLP, and one local counsel in each material jurisdiction; and, in the case of the advisors to the Prepetition Term Agent, to Arnold & Porter Kaye Scholer LLP and one local counsel in each relevant jurisdiction) promptly upon receipt of invoices therefor, which payments (to the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made within 10 days (which time period may be extended by the applicable professional) after the receipt by the Debtors, the Committee, if any, and the U.S. Trustee (the “**Review Period**”) of invoices therefor (the “**Invoiced Fees**”) and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and a summary description of services provided and the aggregate expenses

incurred by the applicable professional firm; *provided, however*, that any such invoice (i) may be limited and/or redacted to protect privileged, confidential, or proprietary information and (ii) shall not be required to contain individual time detail (*provided* that such invoice shall contain (except for financial advisors compensated on other than an hourly basis) summary data regarding hours worked by each timekeeper for the applicable professional and such timekeepers' hourly rates). The Debtors, the Committee, if any, and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by filing with the Court a motion or other pleading, on at least ten days' prior written notice (but no more than thirty days' notice) of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto.

(e) Financial Reporting. The Debtors shall provide the Prepetition Agents with financial and other reporting substantially in compliance with the reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents.

(f) DIP Roll-Up Facility. Subject to entry of a Final Order, the Debtors shall use the DIP Roll-Up Loans to refinance and discharge dollar-for-dollar Prepetition Term Loans held by the DIP Lenders in the aggregate amount equal to the DIP Term Loans and the DIP LC Loans funded under the DIP Facility.

15. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code,

including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtors or any other party may contest any such request.

16. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, on behalf of the DIP Secured Parties, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)), each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the

Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

(b) This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Secured Parties to the priorities granted herein. Notwithstanding the foregoing, a certified copy of this Interim Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (a) and the immediately preceding subparagraph (a).

17. *Milestones.* It is a condition to the DIP Facilities that the Debtors shall comply with the Case Milestones (as defined in the DIP Credit Agreement). Any Case Milestone that would otherwise fall on a Saturday, Sunday or federal holiday will be treated in accordance with Bankruptcy Rule 9006. The failure to comply with any Milestone shall constitute an Event of Default, in accordance with the terms of the DIP Credit Agreement.

18. *Preservation of Rights Granted Under This Interim Order.*

(a) Other than the Carve-Out, Permitted Senior Liens and other claims and liens expressly granted by this Interim Order, no claim or lien having a priority superior to or that is *pari passu* with those granted by this Interim Order to the DIP Secured Parties or the Prepetition Secured Parties, respectively, shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estates under section 551 of the Bankruptcy Code, (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the Loan Parties, or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Loan Parties.

(b) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or that otherwise is at any time entered, (i) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), (ii) the other rights granted by this Interim Order shall not be affected, and (iii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph 18 and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent or the Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacatur, or stay of any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Loan Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolving Agent, or the

Prepetition Term Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and the DIP Documents.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by the entry of an order (i) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission, (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents), or (iii) confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases if the Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the 507(b) Claims, the Adequate Protection Liens, and the Adequate Protection

Obligations and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the Commitments have been terminated.

19. *Effect of Stipulations on Third Parties.*

(a) The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon (i) the Debtors and their estates, in all circumstances and for all purposes and (ii) all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including a Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless (A) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with requisite standing granted by the Court, has timely and properly filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph 19) (1) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Debt or the Prepetition Liens or (2) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests, or defenses (collectively, a "**Challenge**") against the Prepetition Secured Parties or their respective

subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a “**Representative**” and, collectively, the “**Representatives**”) in connection with matters related to any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents, the Prepetition Secured Debt, the Prepetition Liens, the Prepetition Collateral, or otherwise, *provided* that all pleadings filed in connection with a Challenge shall set forth with specificity the basis for such challenge or claim, (B) such Challenge has been filed prior to the latest of (1) (Y) with respect to parties in interest with requisite standing (other than a Committee), 75 calendar days after entry of this Interim Order and (Z) with respect to a Committee, if any, 60 calendar days after the appointment of the Committee, (2) any such later date as has been agreed to, in writing, by the Prepetition Revolving Agent or the Prepetition Term Agent (acting upon the express prior written direction of the Required Lenders (as defined in the DIP Credit Agreement)) (as applicable), and (3) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time set forth in this paragraph 19 (the time period established by the foregoing clauses (1) through (3), the “**Challenge Period**”) (for the avoidance of doubt, if a Committee is appointed after the period in sub-clause (1)(Y) has expired, the Challenge Period shall have expired), and (C) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred.

(b) If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then

(i) the Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order shall be binding on all parties in interest, including, without limitation, the Committee, if any, (ii) the obligations of the Loan Parties under the Prepetition Secured Debt Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) the Prepetition Secured Debt and the Prepetition Liens shall not be subject to any other or further claim or challenge by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, and (v) any defenses, claims, causes of action, counterclaims, and offsets by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to the any claims of the Debtors against the Prepetition Secured Parties, the Prepetition Secured Debt Documents or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is timely and properly filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in this Interim Order shall

nonetheless remain binding and preclusive (as provided in this subparagraph (b)) on a Committee, if any, and on any other person or entity, except to the extent that such stipulations, admissions, agreements, and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including a Committee, if any, or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Secured Debt Documents, the Prepetition Secured Debt or the Prepetition Liens, or claims, counterclaims or causes of action of the Debtors against any Prepetition Secured Party.

20. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding anything herein or in any other order entered by the Court to the contrary, no proceeds of the DIP Facilities, DIP Collateral, Prepetition Collateral (including Cash Collateral), or the Carve-Out may be used (a) for Professional Fees incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or (ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, the Prepetition Secured Debt (including, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code,

applicable non-bankruptcy law or otherwise), the DIP Liens, or the Prepetition Liens or against any of the Prepetition Secured Parties or their respective Representatives, (b) to prevent, hinder, or otherwise delay any of the DIP Agent's or the Prepetition Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Secured Debt Documents or this Interim Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a Remedies Hearing, (c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order or under the DIP Documents or the Prepetition Loan Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion, or (d) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including, without limitation, hereunder); *provided* that notwithstanding anything to the contrary herein, the Committee, if any, may use the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral), and/or the Carve-Out to investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) prior to (but not after) the delivery of a Carve-Out Trigger Notice, (y) the claims and liens of the Prepetition Secured Parties, and (z) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties; *provided further* that no more than an aggregate of \$50,000 of the proceeds of the DIP Facilities, DIP Collateral (including Cash Collateral, but excluding all Cash Collateral in the Cash Collateral Account that secures the DIP Letters of Credit), and/or the Carve-Out may be used by the Committee, if any, in respect of the investigations set forth in the preceding proviso (the "**Investigation Budget**").

21. *Release.* Subject to (i) entry of a Final Order and (ii) paragraph 19 hereof, and as further set forth in the DIP Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit the current or future DIP Agent and other current or future DIP Secured Parties, the Prepetition Revolving Secured Parties, and the Prepetition Term Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, “**Released Parties**”), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facilities, the DIP Documents, the Prepetition Loan Documents, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code (including, without limitation, Avoidance Actions),

and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the DIP Agent, the other DIP Secured Parties, the Prepetition Revolving Secured Parties and the Prepetition Term Secured Parties; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the DIP Loans, the DIP Liens, the DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens, the Adequate Protection Claims, the Adequate Protection Liens, and any adequate protection payment obligations pursuant to this Interim Order. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Documents.

Notwithstanding the releases and covenants contained above in this paragraph, such releases and covenants in favor of the Released Parties shall be deemed acknowledged and reaffirmed by the Debtors each time there is an advance of funds, extension of credit, or financial accommodation under this Interim Order and the DIP Documents.

22. *Exculpation.* Nothing in this Interim Order, the DIP Documents or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender of any liability for any claims arising from the prepetition or post-petition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or any reserves established pursuant to this Interim Order, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the

value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Loan Parties.

23. *Order Governs.* In the event of any inconsistency between the provisions of this Interim Order, the DIP Documents, or any other order entered by the Court, the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by the Court, any payment made, or authorization contained in, any other order entered by the Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including, without limitation, the Approved Budget (including any permitted variances); *provided* that the Approved Budget (including any permitted variances) shall not constitute a cap or limitation on any Professional Fees and shall not affect the Carve-Out.

24. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall

have no obligation to permit the use of the DIP Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed for the estates of the Debtors.

25. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders (and the Prepetition Secured Parties in respect of the use of Cash Collateral) shall not (a) be deemed to be in “control” of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, and (c) be deemed to be acting as a “Responsible Person,” “Owner,” or “Operator” with respect to the operation or management of the Debtors, so long as the DIP Agent’s and the DIP Lenders’ actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of “responsible person” or “managing agent” to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. *Inapplicability of Bar Date; Master Proof of Claim.* Any order entered by the Court establishing a bar date for any claims (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors shall not apply to any DIP Secured Party, any Prepetition Term Secured Party or any Prepetition Revolving Secured Party. The DIP Secured Parties, Prepetition Secured Parties and the Prepetition Revolving Secured Parties shall not be required to file proofs of claim or requests for

approval of administrative expenses authorized by this Interim Order in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors. The provisions of this Interim Order, and, upon the entry thereof, the Final Order, relating to the amount and/or priority of the DIP Loans, the Prepetition Term Debt, the Prepetition Revolving Debt, the Adequate Protection Claims, the Adequate Protection Liens, any adequate protection payments pursuant to this Interim Order, the Prepetition Liens, the DIP Liens and the DIP Superpriority Claims shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, each of the Prepetition Revolving Agent and the Prepetition Term Agent is authorized to file in the Debtors' lead Chapter 11 Case *In re Southcross, et al.*, Case No. 19-____ (___), a single, master proof of claim on behalf of the Prepetition Revolving Secured Parties and the Prepetition Term Secured Parties, as applicable, on account of any and all of their respective claims arising under the applicable Prepetition Secured Debt Documents and hereunder (each, a "**Master Proof of Claim**") applicable against each of the Debtors. Upon the filing of a Master Proof of Claim, (a) the Prepetition Revolving Agent and the Prepetition Revolving Secured Parties and (b) the Prepetition Term Agent and the Prepetition Term Secured Parties, as applicable, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Secured Debt Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases. The

Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. Nothing in this Interim Order shall waive the right of any DIP Secured Party or any Prepetition Secured Party to file its own proof of claim against any of the Debtors. The provisions of this paragraph 26 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in the Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements, or other documents will be provided upon reasonable written request to counsel to the Prepetition Revolving Agent and Prepetition Term Agent, as applicable.

27. *Secured Party Consents.* No approval, agreement, or consent requested of the DIP Secured Parties and/or the Prepetition Secured Parties by the Debtors pursuant to the terms of this Interim Order or otherwise shall be inferred from any action, inaction, or acquiescence of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, other than a writing acceptable to the DIP Secured Parties or the Prepetition Secured Parties, as applicable, that is signed by such person(s) and expressly shows such approval, agreement or consent, without limitation. Nothing herein shall in any way affect the rights of the DIP Secured Parties or the Prepetition Secured Parties as to any non-Debtor entity, without limitation. Unless expressly required otherwise hereunder, any determination, agreement, decision, consent, election,

approval, acceptance, waiver, designation, authorization, or other similar circumstance or matter of any of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, hereunder or related hereto, shall be in the such person(s)' sole and absolute discretion.

28. *Insurance.* To the extent that any of the Prepetition Revolving Agent or Prepetition Term Agent is listed as loss payee or additional insured under any of the Borrower's or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee or additional insured, as applicable, under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, *first*, to the payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted), and *second*, to the payment of the applicable Prepetition Secured Debt.

29. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

30. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

31. *Payments Held in Trust for the DIP Agent and DIP Lenders.* Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto

from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such person, or entity shall be deemed to have received, and shall hold, such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents and this Interim Order.

32. *Credit Bidding.* The DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations other than the amount of the DIP Roll-Up Loans, in any sale of the DIP Collateral. Subject to entry of a Final order, paragraph 19 hereof, and the Intercreditor Agreement, the DIP Secured Parties shall have the right to credit bid, in accordance with the DIP Documents, the amount of the DIP Roll-Up Loans in any sale of the DIP Collateral. Subject to entry of a Final order and subject to paragraph 19 hereof, each of the Prepetition Secured Parties shall have the right to credit bid, subject to the Intercreditor Agreement, up to the full amount of the applicable Prepetition Secured Debt in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code and subject to any successful Challenge, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise.

33. *Wind Down Budget.* In the event that the Debtors pursue a “Section 363 Sale” (as defined in the DIP Credit Agreement) of all or substantially all of the Debtors’ assets, then in connection with such Section 363 Sale, the Debtors and the Required DIP Lenders will negotiate

in good faith a reasonable wind-down budget (the “**Wind-Down Budget**”) to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims and (iii) professional fees and expenses necessary to wind-down the Debtors’ estates in a reasonable and appropriate timeline. Notwithstanding anything else to the contrary in this Interim Order, subject and subordinate to the Carve Out (i) the net proceeds of any Section 363 Sale shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt or any other claims against the Debtors and (ii) any credit bid shall be subject to the Debtors having sufficient cash at the consummation of the Section 363 Sale to satisfy the Wind-Down Budget. For the avoidance of doubt, the Cash Collateral Accounts that secure the DIP Letters of Credit shall not be used as part of the Wind Down Budget or the Carve-Out.

34. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

35. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

36. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret and enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

37. *Final Hearing.* The Final Hearing is scheduled for _____, 2019 at _____ .m. before the Court.

38. *Objections.* Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon (a) counsel to the Debtors, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Marshall S. Huebner, Darren S. Klein, and Steven Z. Szanzer) and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, DE 19899 (Attention: Andrew R. Remming and Robert J. Dehney), (b) counsel to the DIP Agent and DIP Lenders, (i) Arnold & Porter Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614 (Attention: Seth J. Kleinman and Alan Glantz) and (ii) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099 (Attention: Joseph G. Minias, Paul V. Shalhoub, and Leonard Klingbaum), and (iii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn), (c) counsel to the Prepetition Revolving Agent, (i) Vinson & Elkins LLP, Trammell Crow Center 2001 Ross Ave, Suite 3900, Dallas, Texas, 75201 (Attention: Bill Wallander, Brad Foxman, and Matt Pyeatt) and (ii) [•], (d) counsel to the Prepetition Term Agent, (i) Arnold & Porter Kaye Scholer LLP, 70 W. Madison Street, Suite 4200, Chicago, IL 60614 (Attention: Seth J. Kleinman and Alan Glantz) and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn) , (e) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attention: [•]), (f) counsel to the Ad Hoc Group, (i) Willkie Farr & Gallagher LLP, (Attention: Joseph G. Minias, Paul V. Shalhoub, and Leonard Klingbaum) and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Matthew B. Lunn), and (g) counsel to Southcross Holdings LP and its non-Debtor subsidiaries, (i) Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022 (Attention: Natasha Labovitz) and (ii) [•], and (h) any

other party that has filed a request for notices with the Court, in each case to allow actual receipt by the foregoing no later than _____, 2019 at 4:00 p.m. (prevailing Eastern Time).

39. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with the Court and to the Committee after the same has been appointed, or such Committee's counsel, if the same shall have been appointed.

Dated: [], 2019
Wilmington, Delaware

THE HONORABLE [•]
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

**SENIOR SECURED SUPERPRIORITY PRIMING
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of

April [●], 2019

among

**Southcross Energy Partners, L.P.,
a Debtor and a Debtor-in-Possession, as Borrower,**

**Wilmington Trust, National Association,
as DIP Agent,**

and

The Lenders Party Hereto

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THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of April [●], 2019, is among: Southcross Energy Partners, L.P., a Delaware limited partnership and a debtor and debtor-in-possession (the “**Borrower**”); each of the Lenders from time to time party hereto; and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the “**DIP Agent**”);

RECITALS

A. The Borrower entered into that certain Term Loan Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Term Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Term Lenders**”) and Wilmington Trust, National Association, as successor administrative agent for the Prepetition Term Lenders (together with its successors in such capacity, the “**Prepetition Term Agent**”), pursuant to which the Prepetition Term Lenders extended to the Borrower term loans (“**Prepetition Term Loans**”) and made certain other financial accommodations to the Borrower and the other Loan Parties (as defined therein) pursuant to the terms thereof (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Term Loan Facility**”).

B. The Borrower entered into that certain Third Amended and Restated Revolving Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Revolving Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Revolving Lenders**”), the financial institutions acting as issuing banks for the Prepetition Letters of Credit (the “**Prepetition LC Issuers**”) and Wells Fargo Bank, N.A. as administrative agent for the Prepetition Revolving Lenders (together with its successors in such capacity, the “**Prepetition Revolving Agent**”), pursuant to which the Prepetition Revolving Lenders extended revolving loans to the Borrower (the “**Prepetition Revolving Loans**”), issued Prepetition Letters of Credit and made certain other extensions of credit to the Borrower (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Revolving Loan Facility**” and together with the Prepetition Term Loan Facility, the “**Prepetition Facilities**”).

C. On [●], 2019 (the “**Petition Date**”), the Loan Parties filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the “**Bankruptcy Court**”). The Loan Parties are continuing to operate their businesses and manage their properties as debtors and debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

E. Subject to the conditions precedent set forth herein, and the terms and conditions set forth herein, the Borrower has requested, and the Lenders and each Issuing Bank party hereto are willing to make available the credit facilities provided for herein for the purposes set forth herein. The parties hereto further agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS

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

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

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Acceptable Plan**” shall mean a Chapter 11 Plan that (i) provides for the termination of the unused commitments under the Credit Facility and the Payment in Full in cash of the Secured Obligations (and, as applicable, cash collateralization of any issued and undrawn Letters of Credit) upon the effective date of such plan, (ii) provides that the effective date of such plan shall occur by a date that is within the applicable Case Milestones, and (iii) contains customary releases and other exculpatory provisions for the DIP Agent, the DIP Lenders, the Prepetition Revolving Agent, the Prepetition Term Agent, and the Prepetition Lenders in form and substance reasonably satisfactory to the DIP Agent (at the direction of the Required Lenders), and the Prepetition Revolving Agent, and the Prepetition Term Agent.

“**Adjusted LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the LIBO Rate for such Interest Period *multiplied* by the Statutory Reserve Rate.

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

“**Affected Loans**” has the meaning assigned to such term in Section 5.05.

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

“**Agency Fee Letter**” means that certain Fee Letter, by and between the Borrower and the DIP Agent, dated as of the Effective Date, as may be amended, restated, supplemented or otherwise modified from time to time.

“**Agreement**” means this Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, as the same may from time to time be amended, modified, supplemented or restated.

“**Alternate Base Rate**” means, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.5% and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a

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Business Day, the immediately preceding Business Day) *plus* 1.0%. If the DIP Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the DIP Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternate Cash Collateral Amount” means up to the amount set forth on Schedule 1.02(a).

“Anti-Terrorism Law” has the meaning assigned to such term in Section 7.26(a).

“Applicable Margin” means (a) with respect to the DIP Term Loans, (i) for any ABR Borrowing thereof, 9.00%, and (ii) for any Eurodollar Borrowing thereof, 10.00% and (b) with respect to any Roll-Up Loans, 5.25%.

“Applicable Percentage” means, with respect to any Lender, the percentage of the aggregate Commitments represented by such Lender’s Commitment (or, if the Commitments have terminated or expired, the percentage of the aggregate Credit Exposures represented by such Lender’s Credit Exposure at such time); *provided* that in the case of Section 4.04 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the aggregate Commitments (disregarding any Defaulting Lender’s Commitments) represented by such Lender’s Commitment (or, if such Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments (and disregarding any Defaulting Lender’s unfunded Commitment based on the Commitments most recently in effect) at the time of determination).

“Approved Bankruptcy Court Order” means (a) the DIP Orders and the Cash Management Order, as each such order is in effect from time to time and (b) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral, (v) debtor-in-possession financing, or (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, or (viii) any transaction outside of the ordinary course of business with any Loan Party, that, in the case of each of the matters described under clauses (a) and (b), (x) is in form and substance satisfactory (or, solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to the Required Lenders in all respects, (y) once entered, has not been vacated, reversed or stayed and (z) has not been amended or modified except in a manner satisfactory (or,

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solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to, the Required Lenders.

“Approved Budget” means, as of the Effective Date, the Initial Approved Budget and, thereafter, any budget approved by the Required Lenders pursuant to Section 8.01(q).

“Approved Counterparty” means (a) any Lender or any Affiliate of a Lender and (b) any other Person whose (or whose credit support provider’s) long term senior unsecured debt rating is A-/A3 by S&P or Moody’s (or their equivalent) or higher.

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

“Asset Sale” means any sale, transfer, assignment, conveyance or other disposition by any Loan Party, or any of its Subsidiaries to any Person (including by way of redemption by such Person) of any Property (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person), but excluding (a) dispositions resulting from Casualty Events, and (b) sales and other dispositions of Property pursuant to Sections 9.11(a)-(e).

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

“Availability Period” means the period from and including the Effective Date to but excluding the Maturity Date.

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

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

“Bank Products” means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury or cash management services (including, without limitation, deposit accounts, funds transfers, automated clearinghouse services, auto-borrow services, zero balance accounts, returned check concentration, controlled disbursement services, lockboxes, account reconciliation and reporting service, trade finance services, overdraft protection, and interstate depository network services).

“Bank Products Provider” means any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any other Loan Party; provided, that such Lender or Affiliate must have delivered a Secured Party Designation Notice to the DIP Agent.

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

“Bankruptcy Court” shall have the meaning assigned to such term in the recitals of this Agreement.

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

“Bid Deadline” shall have the meaning assigned to such term in Section 8.24(g).

“Bid Procedures” shall have the meaning assigned to such term in Section 8.23(f).

“Bid Procedures and Sale Motion” shall have the meaning assigned to such term in Section 8.23(f).

“Bid Procedures Order” shall have the meaning assigned to such term in Section 8.23(f).

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

“Borrower Materials” has the meaning assigned to such term in Section 8.01.

“Borrower Notice” has the meaning assigned to such term in the definition of “Flood Zone Documentation”.

“Borrowing” means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Dallas, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means, in respect of any Person, for any period, the aggregate (determined without duplication) of all expenditures and costs that are capitalized on the balance sheet of such Person in accordance with GAAP, exclusive of, with respect to each Loan Party, expenditures and costs incurred by such Loan Party to the extent that an unaffiliated third Person has provided such Loan Party with funds to pay such expenditures and costs prior to incurrence.

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“Capital Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

“Carve-Out” has the meaning assigned to such term in the DIP Orders, as applicable; *provided, however*, that notwithstanding any other provision of the DIP Orders or the Loan Documents to the contrary, in no event shall the Carve-Out apply to amounts held in the Letter of Credit Account.

“Case Milestones” shall have the meaning assigned to such term in Section 8.23.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one year from the date of acquisition thereof, (b) commercial paper maturing no more than six months from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody’s, (c) certificates of deposit maturing no more than one year from the date of creation thereof issued by any Lender or commercial banks incorporated under the laws of the United States, having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

“Cash Management Order” has the meaning assigned to such term in Section 6.01(f).

“Casualty Event” means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Loan Parties or any of their Subsidiaries.

“Change in Control” means:

(a) the Sponsors and their Affiliates, collectively, shall cease to beneficially own and control, directly or indirectly, Equity Interests in the General Partner representing a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than the Sponsors and their respective Affiliates of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(c) the General Partner shall cease to be the sole general partner of the Borrower, with substantially the same (or more expansive) powers to manage the Borrower as are granted to the General Partner under the Organization Documents of the Borrower as of the Effective Date;

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(d) the Borrower shall cease to beneficially own and control, directly or indirectly, all of the Equity Interests in each of the other Loan Parties; or

(e) within any period of twelve (12) consecutive calendar months, individuals who were neither (i) members of the board of managers, or similar governing body, of the General Partner on the first day of such period, (ii) persons who were appointed or nominated by such persons, nor (iii) persons who were appointed or nominated by a Sponsor (or an Affiliate of a Sponsor) shall constitute a majority of the members of the board of managers, or similar governing body, of the General Partner.

For the avoidance of doubt, neither proposed entry into a “stalking horse” Qualified APA, entry into (but not consummation of the transactions pursuant to) a Qualified APA in accordance with the Bid Procedures Order nor the filing or proposal of (but not consummation of the transactions pursuant to) an Acceptable Plan shall constitute a Change in Control.

“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; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Chapter 11 Cases” shall have the meaning given to such term in the recitals to this Agreement.

“Chapter 11 Plan” means a plan of reorganization or liquidation filed in any of the Chapter 11 Cases under Section 1121 of the Bankruptcy Code.

“Claim” means all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term “Claim” shall include the items described in the definition of “Claim” in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under any other Bankruptcy Law, all claims or causes of action arising under the

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Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or Uniform Voidable Transactions Act as in effect in any state, and all rights of contribution, subrogation, exoneration or indemnity.

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

“Collateral” means any and all Property of the Loan Parties or any other Person that is secured by a Lien under one or more Security Instruments.

“Commitment” means, (a) with respect to each applicable Lender, the Term Commitment and/or the DIP LC Commitment of such Lender, as the context may require, and (b) with respect to all Lenders, the aggregate Term Commitments and/or the aggregate DIP LC Commitments of all Lenders, as the context may require.

“Commitment Letter” means that certain Commitment Letter, dated March [31], 2019, by and among the Borrower, certain funds or accounts managed by Solus Alternative Asset Management LP, and certain funds or accounts managed by Sound Point Capital Management, LP, as may be amended, restated, supplement and/or otherwise modified from time to time.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. 1, et seq.), as amended from time to time, any successor statute, and any rule, regulation, or order of the Commodities Futures Trading Commission (or the application or official interpretation of any thereof).

“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.

“Consolidated Subsidiaries” means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

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

“Credit Facility” means, individually and collectively as the context may require, the DIP Term Loan facility, Letter of Credit facility and Roll-Up Loan facility established under this Agreement.

“Debt Issuance” means any issuance by a Loan Party or its Subsidiaries of Indebtedness for borrowed money to any Person that is not a Loan Party.

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“Debt Issuance Proceeds” means with respect to any Debt Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Debt Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Debt Issuance.

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

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans within three (3) Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the DIP Agent, any Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend or expect to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after request by the DIP Agent or the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) otherwise failed to pay over to the DIP 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 the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or Person controlling such Lender or the exercise of control over a Lender or Person controlling such Lender by a Governmental Authority or an instrumentality thereof.

“Delayed Draw DIP Funding Date” shall mean any Business Day specified in a Notice of Borrowing delivered by the Borrower to the DIP Agent and on which the conditions set forth in Section 6.02 are satisfied or waived in accordance with the terms hereof and the Delayed Draw DIP Term Loans are made by the Lenders holding Delayed Draw Term Commitments pursuant to Section 2.01(b).

“Delayed Draw DIP Term Loan” shall mean the loan made by the Lenders to the Borrower on the Delayed Draw DIP Funding Date pursuant to Section 2.01(b)

“Delayed Draw Term Commitment” means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the Delayed Draw DIP Term Loans to the Borrower hereunder on the Delayed Draw DIP Funding Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from

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time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's Delayed Draw Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading "Delayed Draw Term Commitment", which shall total \$42,500,000 in the aggregate for all Lenders.

"DIP LC Commitment" means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the DIP LC Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's DIP LC Commitment as of the Effective Date is set forth on Annex I hereto under the heading "DIP LC Commitment", which shall total \$55,000,000 in the aggregate for all Lenders.

"DIP LC Loans" means the loans made by the Lenders to the Borrower on the Effective Date pursuant to Section 2.01(c).

"DIP Order" means, collectively, the Interim DIP Order and, from and after its entry by the Bankruptcy Court, the Final DIP Order.

"DIP Term Loans" shall mean, collectively, the Initial DIP Term Loans, the Delayed Draw DIP Term Loans, and the DIP LC Loans.

"Disqualified Capital Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans, LC Exposure or other obligations hereunder outstanding and all of the Commitments are terminated.

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

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

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

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

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

“Effective Date” means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02) and the Initial DIP Term Loans and the DIP LC Loans have been funded.

“Embargoed Person” has the meaning assigned to such term in Section 9.22.

“Environmental Laws” means any and all Governmental Requirements pertaining in any way to health, safety, the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any Subsidiary is conducting, or at any time has conducted, business, or where any Property of the Borrower or any Subsidiary is located, including, the Oil Pollution Act of 1990 (**“OPA”**), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (**“CERCLA”**), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (**“RCRA”**), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

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

“EP Contract” means that certain Gas Gathering and Processing Agreement (Portions of Atascosa, Dimmit and La Salle Counties) dated February 18, 2014, entered into between Frio LP and EP Energy E&P Company, L.P., a Delaware limited partnership, as in effect on the Effective Date.

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

“Equity Issuance” means (a) any issuance by the Borrower of shares of its Equity Interests to any Person that is not a Loan Party (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Loan Party into any Loan Party or any Subsidiary thereof. The term “Equity Issuance” shall not include (A) any Asset Sale or (B) any Debt Issuance.

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“Equity Issuance Proceeds” means (a) with respect to any Equity Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Equity Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Equity Issuance, and (b) with respect to existing Equity Interests, cash contributions made to the Borrower from the holders of its Equity Interests on account of common equity.

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

“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a “single employer” within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

“ERISA Event” means (a) a “Reportable Event” described in section 4043 of ERISA and the regulations issued thereunder, (b) the withdrawal of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt of a notice of withdrawal liability pursuant to section 4202 of ERISA or (f) any other event or condition which could reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

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

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

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

“Excepted Liens” means: (a) Liens for Taxes, assessments or other governmental charges or levies (other than Liens imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA) that arose prior to the Petition Date and which were, as of the Petition Date, not delinquent or which were being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens arising by operation of law in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) to the extent arising by operation of law, statutory landlord’s liens, operators’, interest owners’, vendors’, carriers’, warehousemen’s,

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repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) subject to the Cash Management Order, Liens arising solely by virtue of customary deposit account agreements with the creditor depository institution or any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution or any other Person (other than the Secured Parties pursuant to the Security Instruments); (e) zoning and land use requirements, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations affecting, and minor irregularities or deficiencies in title to, any real Property of the Borrower or any Subsidiary that do not secure Indebtedness and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Subsidiary or materially impair the value of such Property subject thereto; (f) to the extent in accordance with the Approved Budget (subject to Permitted Variances), Liens on cash or securities pledged to secure performance of tenders, surety, appeal and supersedeas bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations, obligations in respect of workers' compensation, unemployment insurance or other forms of government benefits or insurance and other obligations of a like nature incurred in the ordinary course of business; (g) Liens, titles and interests of lessors of Property leased by such lessors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such leases, and Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the Borrower's or such Subsidiary's leasehold interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such leases; (h) Liens, titles and interests of licensors of software and other intangible Property licensed by such licensors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such licenses, and Liens and encumbrances encumbering such licensors' titles and interests in such Property and to which the Borrower's or such Subsidiary's license interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such licenses; and (i) to the extent arising prior to the Petition Date, judgment and attachment Liens not giving rise to an Event of Default, *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired

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and no action to enforce such Lien has been commenced. Any Lien described in clauses (a) through (d) shall remain an “Excepted Lien” only for so long as (A) the appropriate Loan Party shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, (B) the appropriate Loan Party shall maintain adequate reserves related to such Lien to the extent required by GAAP, and (C) such Lien shall in all respects be subject and subordinate in priority to the Liens created and evidenced by the Security Instruments, except if and to the extent that the Governmental Requirements creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Liens created and evidenced by the Security Instruments; *provided* that no intention to subordinate the first priority Liens granted in favor of the DIP Agent for the benefit of the Secured Parties pursuant to the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

“**Excluded Taxes**” means, with respect to the DIP Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes (i) imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower or any Guarantor is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 5.04(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 5.03(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 5.03(a) or Section 5.03(c), and (d) any United States federal withholding taxes imposed by FATCA.

“**Executive Order**” has the meaning assigned to such term in Section 7.26(a).

“**Exigent Circumstance**” means the existence of any of the following events or conditions, in each case as determined by DIP Agent (at the direction of Required Lenders acting reasonably and in good faith): (i) any material portion of Collateral threatens to decline speedily in value; (ii) DIP Agent (at the direction of Required Lenders acting reasonably) believes that fraud, concealment, material misrepresentation, theft or the withholding or fraudulent removal of Collateral or proceeds of a material portion of Collateral has occurred; (iii) to the extent constituting an Event of Default, a Person (other than a Secured Party in their capacity as such) repossesses or forecloses upon any material portion of Collateral, or (iv) any other event or circumstance occurs or exists that materially and imminently threatens the value or liquidation prospects of any material portion of Collateral, the enforceability or priority of the Liens securing the Secured Obligations or the collectability thereof.

“**Exit Fee**” has the meaning assigned to such term in Section 3.05(e).

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“Extraordinary Receipts” shall mean the Net Cash Proceeds received by any Loan Party not in the ordinary course of business (and not consisting of proceeds from the sale of inventory sold in the ordinary course of business), including, without limitation, (a) proceeds under any insurance policy on account of damage or destruction of any assets or property of such Loan Party (that are not Casualty Events), (b) indemnity payments, (d) foreign, United States, state or local tax refunds, (c) pension plan reversions and (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action.

“FATCA” means sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations or official interpretations thereof.

“FCPA” means the Foreign corrupt Practices Act of 1977, as amended.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Flood Insurance” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Area in a community participating in the National Flood Insurance Program.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the DIP Agent from three Federal funds brokers of recognized standing selected by it.

“FEMA” means the Federal Emergency Management Agency, an agency of the United States Department of Homeland Security that administers the National Flood Insurance Program.

“Final DIP Order” means a Final Order of the Bankruptcy Court in substantially the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a Final Order and to authorize and approve the Roll-Up in the full amount set forth on Schedule 2.01(d) and such other modifications as are satisfactory in form and substance to the DIP Agent and the Required Lenders in their discretion), which order shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the written consent of the DIP Agent or the Required Lenders.

“Final Order” means an order or judgment of the Bankruptcy Court as entered on its docket that has not, in whole or in part, been reversed, vacated, modified, amended or stayed pursuant to any applicable Federal Rule of Bankruptcy Procedure or any other applicable rule of civil or appellate procedure, and as to which the time to appeal, petition for certiorari, or seek re-argument or rehearing has expired, or as to which any right to appeal, petition for certiorari or seek re-argument or rehearing has been waived in writing in a manner satisfactory to the parties in interest, or if a notice of appeal, petition for certiorari, or motion for re-argument or rehearing was timely filed, the order or judgment has been affirmed by the highest court to which the order

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or judgment was appealed or from which the re-argument or rehearing was sought, or a certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument has expired.

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

“Financial Statements” means the Borrower and its Consolidated Subsidiaries’ audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for the fiscal year ending December 31, 2018, setting forth in each case in comparative form the figures for the previous fiscal year.

“Flood Insurance” means, for any owned real Property improved by one or more buildings located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets or exceeds the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in commercially reasonable amounts at least up to the maximum policy limits set under the National Flood Insurance Program.

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

“Flood Zone Documentation” means with respect to any fee interest in any real property improved by a Building or Mobile (Manufactured) Home located in the United States of any Loan Party, to the extent required to comply with Flood Laws: (1) a completed standard flood hazard determination form, (2) if the real property is located in a special flood hazard area, a notification to the applicable Loan Party (**“Borrower Notice”**) and, if applicable, notification to such Loan Party that flood insurance coverage under the National Flood Insurance Program is not available because the community does not participate in the National Flood Insurance Program, (3) documentation evidencing the applicable Loan Party’s receipt of the Borrower Notice and (4) if the Borrower Notice is required to be given and flood insurance is available in the community in which the real property is located, evidence of applicable flood insurance in such form, on such terms and in such amounts as required by the Flood Insurance Laws and as required by the DIP Agent.

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

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

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

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

“**General Partner**” means Southcross Energy Partners GP, LLC, a Delaware limited liability company and the sole general partner of the Borrower.

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

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

“**Guarantors**” means, collectively, each Subsidiary of the Borrower.

“**Guaranty and Collateral Agreement**” means that Debtor-in-Possession Guaranty and Collateral Agreement executed by the Borrower and the Guarantors in substantially the form of Exhibit E granting and confirming security interests in certain Collateral and unconditionally guarantying on a joint and several basis, payment of the Secured Obligations, as the same may be amended, modified or supplemented from time to time.

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

“**Hedging Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, “over-the-counter” or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act);

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provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Borrower or the Subsidiaries shall be a Hedging Agreement.

“Hedging Termination Value” means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

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

“Hydrocarbons” means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

“Immaterial Real Property” means any real Property designated by the Borrower as Immaterial Real Property, if and for so long as the fair market value (as reasonably determined by the Borrower and approved by the Required Lenders) of such Immaterial Real Property, together with all other Immaterial Real Property so designated by the Borrower, does not exceed \$1,000,000 at any time.

“Indebtedness” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services, except (i) trade accounts payable of such Person arising in the ordinary course of business if and to the extent that such trade accounts payable are not past due by more than ninety (90) days or that are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established or are subject to an offset in favor of such Person as a result of accounts receivable owed to such Person and (ii) non-cash purchase price adjustments or non-cash earnouts and the portion of any cash purchase price adjustments or cash earnouts that is not determinable; (d) all obligations under Capital Leases; (e) all obligations under Synthetic Leases; (f) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person, *provided, however*, that the amount of such Indebtedness of any Person described in this clause (f) shall, for purposes of this Agreement, be deemed to be equal to the

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lesser of (i) the aggregate unpaid amount of such Indebtedness or (ii) the fair market value of the Property encumbered; (g) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (i) obligations to pay for electricity, natural gas, other Hydrocarbons and other commodities under contracts having an initial term in excess of one (1) year even if such electricity, natural gas, other Hydrocarbons, and other commodities are not actually taken, received or utilized by such Person; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

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

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

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

“Initial DIP Term Loan” shall mean the loan made by the Lenders on the Effective Date pursuant to Section 2.01(a).

“Initial Roll-Up Loans” has the meaning given to such term in Section 2.01(d).

“Initial Term Commitment” means (a) with respect to each Lender, the commitment of such Lender to make a portion of the Initial DIP Term Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender’s Initial Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading “Initial Term Commitment”, which shall total \$30,000,000 in the aggregate for all Lenders.

“Intellectual Property” shall have the meaning assigned to such term in Section 7.16(d).

“Interest Election Request” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04, substantially in the form of Exhibit C.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last Business Day of each calendar month and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, following an Event of Default and during the continuance thereof, upon demand by the Required Lenders.

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“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect in its applicable Notice of Borrowing or Interest Election Request; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) no Interest Period for any Borrowing shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim DIP Order” means an interim order authorizing and approving, among other things, (a) the DIP Facilities and the extensions of credit thereunder including the incurrence by the Loan Parties of secured indebtedness in accordance with this Agreement, (b) the form of this Agreement and the other Loan Documents, (c) the granting of liens and claims in favor of the DIP Agent and Lenders, (d) the payment by the Loan Parties of the fees contemplated by this Agreement, (e) the provision of adequate protection to the Prepetition Term Lenders and the Prepetition Revolving Lenders in a manner satisfactory to the Required Lenders, (f) the other obligations of the Loan Parties under this Agreement and the other Loan Documents, and (g) such other matters as are usual and customary for orders of this kind, which order shall be in form and substance satisfactory to the Required Lenders in all respects and shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the prior written consent of the DIP Agent or the Required Lenders.

“Investment” means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person (including, without limitation, any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

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

“**Issuing Banks**” means, individually or collectively as the context requires, each of Wells Fargo, RBC and UBS AG, in their respective capacities as issuers of Letters of Credit hereunder (but limited, in the case of Wells Fargo, to Prepetition Letters of Credit deemed issued hereunder (and all amendments, replacements and extensions thereof)), their respective successors in such capacity as provided in Section 2.07(i), and, if requested by the Borrower and consented to by the DIP Agent (acting at the direction of the Required Lenders), any other Person who accepts such appointment and executes a joinder to this Agreement, in form and substance reasonably satisfactory to the Borrower and the DIP Agent, to act as an Issuing Bank under this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“**LC Cash Collateralization Amount**” means an amount equal to 103% multiplied by the amount of all LC Obligations existing at such time.

“**LC Commitment**” means, with respect to each Issuing Bank, the LC Commitment of such Issuing Bank as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement.

“**LC Disbursement**” means a payment made by any Issuing Bank pursuant to a Letter of Credit.

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

“**LC Obligations**” means, at any time, the aggregate maximum amount then available to be drawn under all issued and outstanding Letters of Credit, as calculated in accordance with Section 2.07(l).

“**LC Participant**” shall have the meaning assigned to such term in Section 2.07(d).

“**LC Sublimit**” means, at any time, \$52,597,087.38.

“**Lender Counsel**” means Willkie Farr & Gallagher LLP.

“**Lender Financial Advisors**” means Houlihan Lokey, Inc.

“**Lender Professionals**” means the Lender Financial Advisors and the Lender Counsel.

“**Lenders**” means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

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“**Letter of Credit**” means any standby letter of credit issued (or deemed issued) pursuant to this Agreement or any Letter of Credit Agreement, including without limitation, the Prepetition Letters of Credit deemed issued hereunder upon the Effective Date.

“**Letter of Credit Account**” means a blocked, non-interest bearing trust account maintained by the DIP Agent in which the proceeds of the DIP LC Loans shall be deposited and held as provided in this Agreement. Neither the Borrower nor any of the other Loan Parties shall have any property interest of any kind in the Letter of Credit Account or the funds held therein.

“**Letter of Credit Agreements**” means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit.

“**Letter of Credit Deposit Amount**” means, at any time, the total amount on deposit in the Letter of Credit Account at such time that is then available for disbursement by the Issuing Banks in the event of an LC Disbursement as provided in Section 2.07(e).

“**Letter of Credit Withdrawal Notice**” means a notice delivered by the Borrower signed by a Responsible Officer to the DIP Agent requesting a withdrawal of funds from the Letter of Credit Account, which notice shall set forth (i) the date of such withdrawal, (ii) the amount of such withdrawal, (iii) the identity of the customers and/or suppliers whose obligations will be cash collateralized and (iv) other information requested by the DIP Agent (at the direction of the Required Lenders) that is necessary or appropriate (as determined by the Required Lenders) to determine pro forma compliance with the Loan Documents.

“**Lewis Contract**” means that certain Gas Transportation, Processing and Purchase Agreement dated October 1, 2012, by and among Southcross Marketing Company Ltd., Lewis Petro Properties, Inc., and BP America Production Company, as amended.

“**LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum (rounded to the nearest 1/100th of 1%) determined by the DIP Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars (as set forth on the applicable Bloomberg screen page or by or such other commercially available source providing such quotations as may be designated by the DIP Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the LIBO Rate shall be the interest rate per annum determined by the DIP Agent to be the average of the rates per annum at which the DIP Agent is offered deposits in Dollars by major banks in the London interbank market in London, England at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period. Notwithstanding anything to the contrary contained in this definition, the LIBO Rate shall be deemed not to be less than one percent (1.0%) at any time.

“**Lien**” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law,

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statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations. For the purposes of this Agreement, the Borrower and its Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

“**Loan**” or “**Loans**” means the DIP Term Loans and the Roll-Up Loans.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Letter of Credit Agreements, the Letters of Credit, the Fee Letters, and the Security Instruments.

“**Loan Parties**” and “**Loan Party**” mean, collectively or individually as the context requires, the Borrower and the Guarantors.

“**Material Adverse Change**” means any circumstance or event that has had a Material Adverse Effect.

“**Material Adverse Effect**” means any event, condition or circumstance (other than as a result of (i) the commencement of the Chapter 11 Cases by the Loan Parties, the events and conditions related and/or leading up thereto and the effect of bankruptcy conditions in the industry in which the Borrower operates as of the Effective Date, each as disclosed in materials provided to the Prepetition Term Lenders prior to the Petition Date or in the “first day” motions or declarations filed in the Chapter 11 Cases, and (ii) any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the Chapter 11 Cases) that, individually or in the aggregate, (a) has had or would reasonably be expected to have, a material adverse effect on the business, operations, properties, assets or condition of the Borrower and its Subsidiaries, taken as a whole or (b) has resulted in, or would reasonably be expected to result in, a material impairment of the validity or enforceability of, or a material impairment of the material rights, remedies or benefits available to the Lenders, the Issuing Banks, the DIP Agent or the collateral agent under any Loan Document.

“**Material Contracts**” means, collectively, (a) the EP Contract, (b) the Lewis Contract, (c) the Services Agreements, (d) the Shared Services Agreement, and (e) each other contract for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Material Indebtedness**” means, to the extent incurred on or after the Petition Date, Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount equals or exceeds \$4,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

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“Material Real Property” means any real Property which is not Immaterial Real Property.

“Maturity Date” means the date that is the earliest to occur of: (a) the Scheduled Maturity Date; (b) the effective date of any confirmed Acceptable Plan or any other Chapter 11 Plan of the Loan Parties; (c) the date on which all or substantially all of the assets of the Loan Parties are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code and (d) the acceleration of the maturity of the Loans upon the occurrence of any Event of Default.

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

“Mortgage” means each mortgage, deed of trust or any other document (if any) creating and/or evidencing a Lien on real or immovable Property and other Property in favor of the DIP Agent for the benefit of the Secured Parties, which shall be in a form reasonably satisfactory to the DIP Agent, as the same may be amended, modified, supplemented or restated from time to time in accordance with the Loan Documents.

“Mortgaged Property” means any real Property owned by the Borrower or any of its Subsidiaries that is subject to a Lien pursuant to the DIP Orders and/or a Mortgage.

“National Flood Insurance Program” means the program created by the United States Congress pursuant to the Flood Insurance Laws, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

“Net Cash Proceeds” means, for any event requiring a repayment of Loans pursuant to Section 3.04(b), the gross cash proceeds (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) from such event, net of reasonable attorneys’ fees, accountants’ fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such event (other than any Lien pursuant to a Security Instrument) and other customary fees and expenses actually incurred in connection therewith, and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“Net Sale Proceeds” means for any sale or other disposition of Property pursuant to an Asset Sale, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of (a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than the Secured Obligations) which is

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permitted hereunder and which is secured by the respective Property which was sold or otherwise disposed of, (c) the estimated net marginal increase in income taxes which will be payable by the Borrower or any Subsidiary with respect to the fiscal year of the Borrower in which the Asset Sale occurs as a result of such Asset Sale, and (d) the amount of all reserves required to be maintained by the Borrower or any Subsidiary in accordance with GAAP for any potential indemnity obligations that may be required to be made by the Borrower or any Subsidiary of as a result of such Asset Sale; *provided, however*, that (i) such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the DIP Agent a certificate signed by a Responsible Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than thirteen (13) months following the date of the respective Asset Sale), the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Borrower or any Subsidiary shall constitute Net Sale Proceeds on such date received by the Borrower and/or any Subsidiary from such Asset Sale, and (ii) at such time as the Borrower and the Subsidiaries are no longer required to maintain any indemnity reserves in accordance with GAAP as a result of any Asset Sale, the amount (if any) by which such reserved amount in respect of such Asset Sale exceeds the actual amount of indemnity payments made by the Borrower or any Subsidiary for which such reserves were required to be maintained in respect of such Asset Sale shall constitute Net Sale Proceeds at such time, in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“**Notes**” means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

“**Notice of Borrowing**” means a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the DIP Agent.

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

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non US 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 Lender or Issuing Bank, Taxes imposed as a result of a present or former connection between such Lender or Issuing Bank and

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the jurisdiction imposing such Tax (other than connections arising from such Lender or Issuing Bank 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 or documentary taxes or any other excise or Property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 5.04).

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

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

“Partnership Agreement” means that certain Third Amended and Restated Limited Partnership Agreement of the Borrower dated as of August 4, 2014, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Payment in Full” means the Secured Obligations hereunder have been indefeasibly paid in full in cash and the Commitments have been reduced to zero (0) (other than (i) contingent indemnification obligations for which no Claim has been asserted and (ii) any Letters of Credit outstanding that (A) have been cash collateralized pursuant to Section 2.07(j)(iii)(B) or (B) have had other arrangements made with respect to them that are reasonably satisfactory to the applicable Issuing Bank).

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

“Permitted Variances” has the meaning assigned to such term in Section 9.01.

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

“Petition Date” has the meaning assigned to such term in the recitals to this Agreement.

“Plan” means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or a Subsidiary or an ERISA Affiliate.

“Platform” has the meaning assigned to such term in Section 8.01.

“Prepetition Agent” means, individually or collectively as the context may require, the Prepetition Revolving Agent and the Prepetition Term Agent.

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“Prepetition Collateral” means the "Collateral" under (and as such term is defined in) the Prepetition Loan Agreements.

“Prepetition Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition LC Issuers” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Lenders” means, individually or collectively as the context may require, the Prepetition Revolving Lenders and the Prepetition Term Lenders.

“Prepetition Letters of Credit” means, collectively, letters of credit issued by the Prepetition LC Issuers under the Prepetition Revolving Loan Facility, which, as of the Effective Date, were issued and undrawn, and which are listed on Annex II hereto.

“Prepetition Loan Facility” means, individually or collectively as the context may require, the Prepetition Revolving Facility and the Prepetition Term Facility.

“Prepetition Obligations” means, collectively, (i) the “Secured Obligations” as such term is defined in the Prepetition Revolving Loan Agreement and (ii) the “Secured Obligations” as such term is defined in the Prepetition Term Loan Agreement.

“Prepetition Revolving Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Lenders” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loans” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Secured Parties” means the “Secured Parties” as such term is defined in the Prepetition Credit Agreements.

“Prepetition Term Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Term Lenders” has the meaning assigned to such term in the recitals to this Agreement.

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“**Prepetition Term Loan Agreement**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prepetition Term Loan Facility**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prepetition Term Loans**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prime Rate**” means, for any day, the prime lending rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, “**Prime Rate**” shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the DIP Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

“**Professional Fees**” has the meaning assigned to such term in the DIP Orders.

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including, without limitation, cash, securities, accounts, contract rights and, with respect to any Person, Equity Interests or other ownership interests of any other Person), whether now in existence or owned or hereafter acquired.

“**Proposed Budget**” has the meaning assigned to such term in Section 8.01(q).

“**Public Lender**” has the meaning assigned to such term in Section 8.01.

“**Purchase Money Indebtedness**” means Indebtedness, the proceeds of which are used to finance the acquisition, construction, installation, transport and/or improvement of inventory, equipment or other Property in the ordinary course of business.

“**Qualified APA**” means an asset purchase agreement, stock purchase agreement or any similar agreements or documents in respect of a Qualified Sale Transaction.

“**Qualified Sale Transaction**” means a Section 363 Sale which provides for Payment in Full concurrently with the consummation of such sale and is in form and substance reasonably satisfactory to the Required Lenders.

“**RBC**” means Royal Bank of Canada - New York Branch.

“**Recovery Event**” means the receipt by the Borrower or any Subsidiary of any cash insurance proceeds or condemnation awards payable by reason of a Casualty Event.

“**Redemption**” means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the

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segregation of funds with respect to any of the foregoing) of such Indebtedness. “**Redeem**” has the correlative meaning thereto.

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

“**Regulation D**” means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

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

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

“**Remedial Work**” has the meaning assigned to such term in Section 8.11(a).

“**Required Lenders**” means, at any time while no Credit Exposure is outstanding one or more Lenders having greater than fifty percent (50%) of the aggregate Commitments; and at any time while any Credit Exposure is outstanding, one or more Lenders holding greater than fifty percent (50%) of the total Credit Exposure (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(d)); *provided* that the Commitments and the principal amount of the total Credit Exposure of the Defaulting Lenders (if any) shall be excluded from the determination of Required Lenders.

“**Responsible Officer**” means, as to any Person, the Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower or of the General Partner acting on behalf of the Borrower.

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

“**Roll-Up**” has the meaning given to such term in Section 2.01(d).

“**Roll-Up Loans**” has the meaning given to such term in Section 2.01(d).

“**Sanctions**” has the meaning assigned to such term in Section 7.26(d).

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

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“Scheduled Maturity Date” means [●]¹; *provided* that the Borrower shall have the right to extend the Scheduled Maturity Date for a period of ninety (90) days subject to satisfaction of the following conditions precedent: (i) the Borrower shall have provided the DIP Agent with not less than five (5) Business Days’ prior written notice of its request for such extension; (ii) the Required Lenders shall have consented to such extension; and (iii) the Borrower shall have paid to the DIP Agent for the benefit of each Lender that consents to the extension within four (4) Business Days of the Borrower’s request, an extension premium in an amount equal to 1.00% of such Lender’s Loans then outstanding (which premium shall be paid in cash unless the Required Lenders in their sole discretion elect that such premium be paid-in-kind).

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

“Section 363 Sale” means a sale of all or substantially all of the assets and business of the Loan Parties conducted pursuant to Section 363 of the Bankruptcy Code (it being understood, for the avoidance of doubt, that the Loan Parties may sell Properties listed on Schedule 9.11 pursuant to Section 9.11(j) and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii)).

“Secured Obligations” means any and all obligations of and amounts owing or to be owing by the Borrower, any Subsidiary or any other Loan Party (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the DIP Agent, any Issuing Bank, any trustee or any Lender under any Loan Document; (b) [reserved]; (c) to any Bank Products Provider in respect of any Bank Products; and (d) all renewals, extensions and/or rearrangements of any of the above. For the avoidance of doubt, the “Secured Obligations” shall include all Loans, Initial DIP Term Loans, Delayed Draw DIP Term Loans, Roll-Up Loans, and all Fees hereunder or under any other Loan Document.

“Secured Parties” means, collectively, the DIP Agent, each Issuing Bank, each Lender, and each Bank Products Provider.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit J.

“Security Instruments” means the DIP Orders, the Guaranty and Collateral Agreement, the Mortgages, the other agreements, instruments or certificates described or referred to in Schedule 1.02(a), and any and all other agreements, instruments, consents, or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Bank Products agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

¹ 6 months from the petition date.

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“Services Agreements” means, collectively, (a) that certain Transportation Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between Southcross NGL Pipeline Ltd. and Frio LaSalle Pipeline, LP, (b) that certain Gas Gathering and Treating Agreement dated and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, LP, and (c) that certain Master Compression Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, L.P.

“Shared Services Agreement” means that certain Shared Services Agreement, dated March 31, 2019, among the Borrower, Southcross Energy GP LLC, Southcross Holdings and Southcross Holdings GP, LLC.

“Southcross Holdings” means Southcross Holdings LP, a Delaware limited partnership.

“Sponsors” means one or more funds, accounts, or other entities managed or advised by either Tailwater Capital LLC or EIG Management Company, LLC.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the DIP Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Structuring Fee” has the meaning assigned to such term in Section 3.05(a).

“Subsidiary” means: (a) any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by (i) another Person, (ii) one or more of such other Person’s Subsidiaries, or (iii) collectively, such other Person and one or more of such other Person’s Subsidiaries, and (b) any partnership of which such other Person or any of such other Person’s Subsidiaries is a general partner. Unless otherwise indicated herein, each reference to the term **“Subsidiary”** means a Subsidiary of the Borrower.

“Superpriority Claim” shall mean a claim against any Loan Party in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other post-petition claims of the kind specified in, or otherwise arising or ordered under, any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726 (to the extent permitted by

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law), 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment, other than the Carve-Out.

“Synthetic Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of U.S. federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

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

“Term Commitment” means (a) with respect to each Lender, the Initial Term Commitment or Delayed Term Commitment of such Lender, as the context may require, in each case, as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement and (b) the aggregate Term Commitments of all Lenders. The aggregate Term Commitments of all Lenders as of the Effective Date shall total \$72,500,000.

“Testing Period” means (a) for each Variance Testing Date that is prior to the date that is four weeks after the Petition Date, the period from the Petition Date through the immediately preceding calendar week (ending on a Friday) and (b) for each Variance Test Date that is on or after the date that is four weeks after the Petition Date, the rolling four-week period most recently ended on the last Friday prior to the delivery thereof.

“Transactions” means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof (including, without limitation, the Roll-Up), the issuance or deemed issuance of Letters of Credit hereunder, and the grant of Liens by the Borrower on Collateral pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations and the other obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor’s grant of the security interests and provision of Collateral under the Security Instruments, and the grant of Liens by such Guarantor on Collateral pursuant to the Security Instruments.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

“UBS AG” means UBS AG, Stamford Branch.

“USA Patriot Act” has the meaning assigned to such term in Section 12.16.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.03(f).

“Variance Report” has the meaning assigned to such term in Section 8.01(q)(ii).

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

“Wells Fargo” means Wells Fargo Bank, N.A.

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

“Wind-Down Budget” has the meaning assigned to such term in Section 8.23(c).

“Withdrawal” shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(e).

“Withdrawal Request” shall mean a written request by an Issuing Bank for a Withdrawal, substantially in the form of Exhibit I.

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

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

Section 1.03 Types of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a **“Eurodollar Loan”**), and Borrowings may be classified and referred to by Type (e.g., a **“Eurodollar Borrowing”**).

Section 1.04 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law or regulation shall be construed, unless otherwise specified, as referring to such law or regulation as amended, modified, supplemented, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to

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refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP. (a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the DIP Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower’s independent certified public accountants concur and which are disclosed to the DIP Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that unless the Borrower and the Required Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above of the definition of “Capital Lease,” all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance of the Financial Accounting Standards Board on February 25, 2016 or an Accounting Standards Update (“ASU”) shall continue to be accounted for as operating leases for purposes of this agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized Lease Obligations in the Company’s financial statements.

Section 1.06 Time Periods. Unless otherwise specified, in the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

ARTICLE II THE CREDITS

Section 2.01 Commitments.

(a) Initial DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having an Initial Term Commitment severally agrees to make its portion of the Initial DIP Term Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s Initial Term Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other

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provisions hereof), the funded portion of the Initial DIP Term Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the Initial DIP Term Loan (it being agreed that the full principal amount of the Initial DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). Once the Initial Term Loan has been borrowed, in any amount, the Initial Term Commitment shall be reduced to \$0.

(b) Delayed Draw DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having a Delayed Draw Term Commitment severally agrees to make its portion of the Delayed Draw DIP Term Loan to the Borrower on the Delayed Draw DIP Funding Date in a principal amount equal to such Lender’s Delayed Draw Term Commitment as of such date; *provided that*, the aggregate amount of DIP Term Loans shall not exceed the amount the Borrower is authorized to borrow pursuant to the terms of the Final DIP Order. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP Term Loan to be made on such Delayed Draw DIP Funding Date (*i.e.*, the amount advanced to Borrower on such dates) shall be equal to 98.5% of the principal amount of the Delayed Draw DIP Term Loan (it being agreed that the full principal amount of the Delayed Draw DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on such date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Delayed Draw Term Commitment shall be reduced to \$0 upon the earlier of (a) the date the Delayed Draw Term Loan has been borrowed, in any amount, and (b) the date that is thirty (30) days after the date the Final DIP Order is entered.

(c) DIP LC Loan. Subject to the terms and conditions of this Agreement, each Lender having a DIP LC Commitment severally agrees to make its portion of the DIP LC Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s DIP LC Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP LC Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the DIP LC Loan (it being agreed that the full principal amount of the DIP LC Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Borrower hereby directs the applicable Lenders and the DIP Agent to cause the proceeds of the DIP LC Loan (net of the original issue discount set forth above) to be deposited in the Letter of Credit Account on the Effective Date. Once the DIP LC Loan has been borrowed, in any amount, the DIP LC Commitment shall be reduced to \$0.

(d) Roll-Up Loans. Subject to the terms and conditions set forth herein, (i) upon entry of the Final DIP Order, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the “Initial Roll-Up Loans”), on a pro rata basis (based on the Initial DIP Term Loans and DIP LC Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to

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Section 2.01(a) or (c)), and (ii) on the Delayed Draw DIP Funding Date, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (together with the Initial Roll-Up Loans, the “**Roll-Up Loans**”), on a pro rata basis (based on the Delayed Draw DIP Term Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to Section 2.01(b)), in each case, in an aggregate principal amount equal to \$1.00 of Prepetition Term Loans of such Lender or Affiliate of such Lender for each \$1.00 of DIP Term Loans (and such Roll-Up Loans shall be deemed funded on the date the Final DIP Order is entered or the Delayed Draw DIP Funding Date, as applicable, and shall constitute and shall be deemed to be Loans hereunder) (the foregoing substitution and exchange of Prepetition Term Loans into Roll-Up Loans shall be defined herein, generally, as the “**Roll-Up**”).

(e) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting “Required Lenders” hereunder, Initial DIP Term Loans, Delayed Draw DIP Term Loans, the DIP LC Loans, and the Roll-Up Loans shall constitute a single class of Loans.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. The DIP Term Loans shall be made by the Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. The Roll-Up Loans and the DIP LC Loans shall be deemed Borrowings entirely of ABR Loans.

(c) Minimum Amounts; Limitation on Number of Borrowings. Borrowings of more than one Type may be outstanding at the same time, provided that there shall not at any time be more than a total of four (4) Eurodollar Borrowings outstanding. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(d) Notes. The Loans made by each Lender, if requested by such Lender, shall be evidenced by one or more promissory notes of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement, or (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption, as of the effective date of such Assignment and Assumption, payable to such Lender in a principal amount equal to its Commitments (or Loans, if applicable),

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and otherwise duly completed. In the event that any Lender's Commitment or Loans increases or decreases for any reason (whether pursuant to Section 12.04(b) or otherwise), if requested by such Lender, the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Commitment or Loans, as applicable, after giving effect to such increase or decrease, and otherwise duly completed. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its applicable Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 Procedure for Advance of Loans.

(a) Term Loan. To request a Borrowing of DIP Term Loans, the Borrower shall give the DIP Agent an irrevocable Notice of Borrowing (provided that any Notice of Borrowing may be conditioned upon the entry of the Interim DIP Order or the Final DIP Order) prior to (a) in the case of a Eurodollar Borrowing [11:00 a.m.], New York City time, three (3) Business Days before (or one (1) Business Day before in the case of a Eurodollar Borrowing on the Effective Date) the proposed Borrowing (or such shorter period approved by DIP Agent prior to the date of such Borrowing) or (b) in the case of an ABR Borrowing, not later than [11:00a.m], New York City Time, one (1) Business Day before the date of the proposed Borrowing, requesting that the Lenders make the applicable DIP Term Loans on such date. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of ABR Loans. Thereafter, the Borrower may elect to convert a Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans to a different Type or to continue a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans as the same Type and, in the case of a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than four (4) Eurodollar Borrowings outstanding hereunder at any one time.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the DIP Agent an Interest Election Request by the time that a Notice of Borrowing would be required under Section 2.03 if the Borrower were requesting a

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Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Sections 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the DIP Agent. Promptly following receipt of an Interest Election Request, the DIP Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) Notwithstanding anything to the contrary herein, Roll-Up Loans and DIP LC Loans shall only be borrowed as ABR Loans, and may not be converted to Eurodollar Loans.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by [12:00

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noon, New York City time], to the account of the DIP Agent most recently designated by it for such purpose by notice to the Lenders. The Borrower hereby irrevocably authorizes the DIP Agent to disburse the proceeds of the DIP Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing (or in the case of proceeds of the DIP LC Loans, to the Letter of Credit Account). Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner.

(b) Funding by the Lenders; Presumption by the DIP Agent. Unless the DIP Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the DIP Agent such Lender's share of such Borrowing, the DIP Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the DIP Agent, then the applicable Lender and the Borrower severally agree to pay to the DIP Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the DIP Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the DIP Agent for the same or an overlapping period, the DIP Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the DIP Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the DIP Agent.

Section 2.06 [Reserved].

Section 2.07 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of dollar denominated Letters of Credit for its own account or for the account of any of its Subsidiaries, in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder, if, after giving effect to such issuance, amendment, renewal or extension, (i) the LC Cash Collateralization Amount would exceed the Letter of Credit Deposit Amount, (ii) the LC Exposure would exceed the LC Sublimit, or (iii) the aggregate LC Exposure for any Issuing Bank shall not exceed its applicable LC Commitment. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

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(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.

The Prepetition Letters of Credit shall be deemed to have been cancelled and re-issued hereunder as of the Effective Date. To request the issuance of any other Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall fax (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the DIP Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.07(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(vi) specifying the current total LC Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total LC Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(vii) specifying the current Letter of Credit Deposit Amount and calculating the *pro forma* LC Cash Collateralization Amount (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

Each notice shall constitute a representation and warranty with respect to the information set forth therein and that after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (x) the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount, (y) the LC Exposure shall not exceed the LC Sublimit, and (z) each condition precedent set forth in Section 6.02 has been satisfied with respect to such Letter of Credit.

If requested by the applicable Issuing Bank in connection with any request for a Letter of Credit (other than the Prepetition Letters of Credit deemed to be issued hereunder on the Effective Date), the Borrower also shall submit an appropriately completed letter of credit application on such Issuing Bank's standard form as in effect from time to time, which application may require the inclusion of draft language for such Letter of Credit that is

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reasonably acceptable to such Issuing Bank and may be required to be signed by a Responsible Officer of the Borrower.

No Issuing Bank will be required to: (A) issue any Letter of Credit if (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (2) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally, (3) except as otherwise agreed by such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$10,000, (4) such Letter of Credit is to be denominated in a currency other than Dollars, or (5) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (B) amend or extend any Letter of Credit if such Issuing Bank would not be required at such time to issue the Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is ten (10) Business Days prior to the Maturity Date. Each Letter of Credit with a one (1) year term may provide for the renewal thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above. Notwithstanding the foregoing, Letters of Credit may be issued with an expiration date that extends past the date set forth in clause (ii) above and so long as such Letter of Credit is cash collateralized pursuant to Section 2.07(j)(iii)(B).

(d) LC Participations. Any Issuing Bank may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any other Issuing Bank, sell participations in Letters of Credit (up to the aggregate amount available to be drawn under such Letter of Credit) or LC Disbursements that have not been reimbursed by the Borrower as provided in Section 2.07(e) to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, an "**LC Participant**"); *provided* that (A) such Issuing Bank's obligations under this Agreement shall remain unchanged, (B) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, the Lenders and any other Issuing Banks shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Banks's rights and obligations under this Agreement.

(e) Reimbursement. (i) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to

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the DIP Agent for the account of such Issuing Bank an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York time, on (x) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that the Borrower's obligation to reimburse such Issuing Bank with respect to such LC Disbursement shall first be satisfied by funds disbursed to such Issuing Bank from the Letter of Credit Account and applied to such reimbursement obligations in accordance with clauses (ii) through (iv) of this Section 2.07(e) (and the Borrower hereby irrevocably authorizes and instructs such Issuing Bank to request such withdrawals and applications without notice of any kind or further order or action by the Bankruptcy Court) Promptly following receipt by the DIP Agent of any payment from the Borrower pursuant to this Section 2.07(e), the DIP Agent shall distribute such payment to the applicable Issuing Bank.

(ii) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, such Issuing Bank may request that the DIP Agent disburse funds from the Letter of Credit Account to such Issuing Bank to reimburse such Issuing Bank for such LC Disbursement, by delivering to the DIP Agent a Withdrawal Request specifying (A) the amount of the disbursement to be made to such Issuing Bank, (B) the Letter of Credit to which such disbursement relates and (C) the wiring information of the bank account of such Issuing Bank to which such funds are to be sent. Promptly following its receipt of a Withdrawal Request, the DIP Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Withdrawal Request to the account of the Issuing Bank specified in such Withdrawal Request. All proceeds of the DIP LC Loans shall be held in the Letter of Credit Account at all times until such proceeds are disbursed or otherwise applied in accordance with this Agreement.

(iii) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account hereunder, the DIP Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Withdrawal Request submitted by an Issuing Bank as evidence that (A) an LC Disbursement has been made by such Issuing Bank in the amount specified in such Withdrawal Request and (B) such Issuing Bank is entitled to receipt funds from the Letter of Credit Account in the amount specified in such Withdrawal Request. Notwithstanding anything herein to the contrary, the DIP Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The DIP Agent shall have no duty to inquire or investigate whether any Issuing Bank is entitled to receive the funds requested in the applicable Withdrawal Request, and shall not be deemed to have any knowledge as to whether or not any such Withdrawal Request is permitted to be given.

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(iv) For the avoidance of doubt, all DIP LC Loans shall be Loans for all purposes hereunder and, notwithstanding that the proceeds of such DIP LC Loans are held in the Letter of Credit Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents to the same extent as all other Loans. The Borrower shall pay to the DIP Agent upon demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance of the Letter of Credit Account

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.07(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.07(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the DIP Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a

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Letter of Credit. Each Issuing Bank shall promptly notify the Borrower by telephone (confirmed by facsimile (with a copy to the Agent)) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or funds withdrawn from the Letter of Credit Account), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.07(h) shall be for the account of the applicable Issuing Bank.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the DIP Agent (acting at the direction of the Required Lenders), the replaced Issuing Bank and the successor Issuing Bank. The DIP Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(a). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous or existing Issuing Bank, or to such successor and all previous and existing Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) Establishment of Letter of Credit Account. The DIP Agent shall establish the Letter of Credit Account.

(ii) Deposits in Letter of Credit Account. The Letter of Credit Account shall be funded by the Borrower on the Effective Date from the proceeds of the DIP LC Loans advanced pursuant to Section 2.01(c).

(iii) Withdrawals from and Closing of Letter of Credit Account. Amounts on deposit in the Letter of Credit Account shall be withdrawn and distributed as follows:

(A) in accordance with Section 2.07(e) above;

(B) upon delivery of a Letter of Credit Account Withdrawal Notice to the DIP Agent at least two (2) Business Days prior to the date of a requested withdrawal, the Borrower may withdraw an amount not to

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exceed in the aggregate, together with all other such withdrawals, the Alternate Cash Collateral Amount; *provided* that the proceeds of such withdrawal shall be used by the Borrower and the other Loan Parties solely to cash collateralize the obligations of the vendors and suppliers of the Loan Parties in accordance with Section 9.03(j);

(C) the Borrower may from time to time request the release of cash collateral from the Letter of Credit Account; *provided* that the Borrower shall direct that 100% of the amounts withdrawn immediately prepay the Loans in the amount of the cash so released; *provided, further*, that any prepayment pursuant to this clause shall be applied to the Loans in accordance with Section 3.04(c); *provided, further*, that in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such release;

(D) upon the Maturity Date, unless otherwise specified by an order rendered by the Bankruptcy Court: (1) if the DIP Agent has received written notice from each Issuing Bank that all Letters of Credit issued by such Issuing Bank have expired or been cancelled (or that a “backstop” letter of credit or other cash collateralization thereof at 103% pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank) (such written notice, an “**LC Termination Notice**”), the DIP Agent shall, unless otherwise directed by the Required Lenders, withdraw from the Letter of Credit Account the aggregate amount then on deposit therein and apply such amounts to repayment of the Secured Obligations as set forth in Section 10.02(c) or (2) if the DIP Agent has not received such LC Termination Notice, the DIP Agent shall withdraw from the Letter of Credit Account the aggregate amount then on deposit therein that is equal to 103% of the face amount of Letters of Credit then outstanding and disburse such amounts in accordance with a written direction from the Issuing Banks (or, in the absence of such written direction, the DIP Agent may request that the Bankruptcy Court make such determination).

Except as otherwise provided in clause (iii) above, or any Letter of Credit Agreement, amounts in the Letter of Credit Account may not be withdrawn by the Borrower or used for any purpose other than the reimbursement of the Issuing Banks or repayment of the Secured Obligations hereunder.

(iv) The Borrower hereby grants to the DIP Agent, for the benefit of the Issuing Banks and the other Secured Parties, an exclusive superpriority and continuing perfected security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor.

(v) The Borrower's obligation to deposit amounts pursuant to this Section 2.07(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any of its Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the DIP Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantors' obligations under this Agreement and the other Loan Documents. Subject to Sections 2.07(j)(iii)(C) and (D), the DIP Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Such deposits shall not bear interest.

(k) Applicability of ISP. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and such Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Calculation of Maximum Stated Amount. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

ARTICLE III

PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans. If not sooner paid (pursuant to Section 3.04), the Borrower shall pay the DIP Term Loan and all other Secured Obligations, or in the case of Letters of Credit cash collateralized in accordance with Section 2.07(j)(iii)(D), in full and in cash, together with accrued interest thereon, on the Maturity Date.

Section 3.02 Interest.

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(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at an annual rate equal to the sum of (i) the Alternate Base Rate *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at an annual rate equal to the sum of (i) the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, or if any principal of or interest on any Loan or any fee or other amount payable by the Borrower or any other Loan Party hereunder or under any other Loan Document is not paid when due, whether at stated maturity, upon acceleration or otherwise, then all Loans outstanding, in the case of an Event of Default, and such overdue amount, in the case of a failure to pay amounts when due, shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2.0%) *plus* (i) when used with respect to obligations other than Loans, an interest rate equal to the rate applicable to ABR Loans as provided in Section 3.02(a), and (ii) when used with respect to Loans the rate otherwise applicable to such Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; *provided* that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the DIP Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the DIP Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Interest Period; or

(b) the DIP Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect

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the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period; then the DIP Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the DIP Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing (without giving effect to clause (c) of the definition of Alternative Base Rate).

Section 3.04 Prepayments.

(a) Optional Prepayments.

(i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (other than the Exit Fee), subject to prior notice in accordance with Section 3.04(a)(ii).

(ii) The Borrower shall notify the DIP Agent by telephone (confirmed by facsimile or e-mail) of any prepayment hereunder (A) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided*, that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked (by written notice to the DIP Agent on or prior to the specified effective date) if such condition is not satisfied (provided that the failure of such condition shall not relieve the Borrower from its obligations under Section 5.02 in respect thereof). Promptly following receipt of any such notice relating to a Borrowing, the DIP Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. Each optional prepayment made pursuant this Section 3.04(a) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(b) Mandatory Prepayments. Subject to the Carve-Out and the Wind-Down Budget (if any):

(i) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Extraordinary Receipt, an amount equal to 100% of the Net Cash Proceeds from such Extraordinary Receipt shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(ii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Asset Sale made pursuant to Section 9.11(f) and (j), an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied by the Borrower on such date as a mandatory repayment in accordance with Section 3.04(c).

(iii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Cash Proceeds from such Recovery Event shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(iv) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any issuance of Indebtedness (other than Indebtedness permitted by Section 9.02), an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(v) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any Equity Issuance Proceeds, an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(vi) Each optional prepayment made pursuant this Section 3.04(b) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(vii) If the Borrower is required to make a mandatory prepayment of Eurodollar Borrowings under this Section 3.04, the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the DIP Agent in a non-interest bearing cash collateral account maintained by and in the sole dominion and control of the DIP Agent. Any amounts so deposited shall be held by the DIP Agent as collateral for the prepayment of such Eurodollar Rate Loans and shall be applied to the prepayment of the applicable Eurodollar Rate Loans at the end of the current Interest Periods applicable thereto.

(c) Prepayments Waterfall. All Prepayments pursuant to this Section 3.04 shall be accompanied by accrued interest to the extent required by Section 3.02. Subject to the Carve-Out and the Wind-Down Budget (if any), each prepayment of Borrowings pursuant to this Section 3.04 shall be applied by the Borrower, in accordance with the DIP Order, and to the extent not in contravention with the DIP Order: (i) *first*, ratably to pay the Exit Fee, if applicable, (ii) *second*, to be remitted by the Borrower to the DIP Agent and applied by the DIP Agent ratably to repay the DIP Term Loans then outstanding, (iii) *third*, to be remitted by the Borrower to each of the Prepetition Term Agent and the Prepetition Revolver Agent, to be used by such Prepetition Agent to pay any superpriority adequate protection claims of the Prepetition Secured

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Parties on a pro rata basis; and (iv) *thereafter*, to be remitted by the Borrower to the Prepetition Revolving Agent, the Prepetition Term Agent and the DIP Agent, in such amounts to ratably repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); *provided that*, each repayment of Borrowings made under each tranche shall be applied, *first* ratably to any ABR Borrowings then outstanding under such tranche, and, *second*, to any Eurodollar Borrowings then outstanding under such tranche; *provided further*, if more than one Eurodollar Borrowing is outstanding under such tranche, such repayments shall be made to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(d) No Premium or Penalty. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty (other than the Exit Fee), except as required under Section 5.02.

(e) Notice of Prepayment. The Borrower shall notify the DIP Agent by written notice of any mandatory prepayment under Section 3.04(b) not later than 11:00 a.m., New York City time, two Business Days before the date of such prepayment. Each such notice shall specify the prepayment date (which shall be a Business Day), the principal amount of each Borrowing or portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the DIP Agent shall advise the Lenders of the contents thereof.

(f) No Reborrowings. Amounts prepaid pursuant to this Section 3.04 may not be reborrowed.

Section 3.05 Fees.

(a) Structuring Fees. The Borrower agrees to pay to the DIP Agent, for the benefit of each Lender, a structuring fee (the “Structuring Fee”) equal to 1.00% of the aggregate amount of such Lender’s Commitment, which shall be due and payable on the Effective Date either in cash, or at the option of the Required Lenders, as “original issue discount” from the funded amounts advanced to Borrower on the Effective Date.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to each Issuing Bank, for its own account, (x) a fronting fee equal to 0.125% of the stated amount of each Prepetition Letter of Credit deemed issued by it hereunder, and (y) a fronting fee equal to 0.50% of the stated amount of each other Letter of Credit issued by it, *provided that*, in each case, in no event shall such fronting fee be less than \$750.00 for any Letter of Credit, and (ii) to each Issuing Bank, for its own account, its standard fees with respect to the issuance, amendment, transfer, renewal or extension of any Letter of Credit issued by it or processing of drawings thereunder payable upon the effectiveness thereof. Fronting fees shall be payable in advance (1) with respect to any Prepetition Letters of Credit deemed issued hereunder, on the Effective Date, and (2) with respect to any other Letter of Credit, on the date of issuance of such Letter of Credit.

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Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand.

(c) Commitment Premiums. The Borrower agrees to pay to the DIP Provider Parties (as defined in the Commitment Letter), for their own account, the premiums payable in the amounts and at the times set forth in the Commitment Letter.

(d) DIP Agent Fees. The Borrower agrees to pay to the DIP Agent, for its own account, fees payable in the amounts and at the times set forth in the applicable Agency Fee Letter.

(e) Exit Fees. The Borrower shall pay to the DIP Agent, for the ratable benefit of each Lender, an exit fee (the “**Exit Fee**”) equal to 1.50% of the aggregate amount of such Lender’s DIP Term Loans and unused Delayed Draw Term Commitment. The Exit Fee (or portion thereof, as applicable) shall be paid in cash (i) on the date of any prepayment or repayment of DIP Term Loans pursuant to Section 3.04 or otherwise, and (ii) on the Maturity Date. The Exit Fee, when paid, shall be paid to the DIP Agent for the benefit of each DIP Term Lender, ratably based on its Applicable Percentage.

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

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

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the DIP Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the DIP Agent to the account of the DIP Agent from time to time for receipt of payments, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The DIP Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

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

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due to such parties, (ii) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (iii) third, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the DIP Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (B) the provisions of this Section 4.01 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Payments by the Borrower; Presumptions by the DIP Agent. Unless the DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due to the DIP Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the DIP Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or any Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the DIP Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the DIP Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the DIP Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(a), Section 4.02, Section 12.03(c) or otherwise hereunder then the DIP Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) apply any amounts thereafter received by the DIP Agent for the account of such Lender and for the benefit of the DIP Agent or the Issuing Banks to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (b) hold any such amounts in a segregated account as cash collateral for, and application to, any

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future funding obligations of such Lender hereunder, in the case of each of (a) and (b) above, in any order as determined by the DIP Agent in its discretion. If at any time prior to the acceleration or maturity of the Loans, the DIP Agent receives any payment in respect of principal of a Loan while one or more Defaulting Lenders is a party to this Agreement, the DIP Agent shall apply such payment first to the Borrowing(s) for which any such Defaulting Lender has failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, all principal will be applied ratably as provided in Section 10.02(c).

Section 4.04 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) [reserved]; and

(b) the Commitment and the Credit Exposure 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 12.02), *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each adversely affected Lender which affects such Defaulting Lender differently than all other Lenders or all other adversely affected Lenders, as the case may be, shall require the consent of such Defaulting Lender.

ARTICLE V

INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs.

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

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

(ii) subject any Lender or any Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender or any Issuing Bank in respect thereof (except for Indemnified Taxes, Other Taxes covered by Section 5.03 or Connection Income Taxes and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or any Issuing Bank); or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or

Eurodollar Loans made by such Lender or any Letter of Credit; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Issuing Bank of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Sections 5.01(a) or (b) and delivered to the Borrower (with a copy to the DIP Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or such Issuing Bank pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 365 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; *provided, further,* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 365-day period referred to above shall be extended to include the period of retroactive effect thereof.

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Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower (with a copy to the DIP Agent) and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.03(a)), the DIP Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by the Borrower.** Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by the Borrower.** The Borrower shall indemnify the DIP Agent, each Lender and each Issuing Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable

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or paid by the DIP Agent, such Lender or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03 delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the DIP Agent), or by the DIP Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the DIP Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the DIP Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(d)(ii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the DIP Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any other source against any amount due to the DIP Agent under this paragraph (d).

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

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under this Agreement or any other Loan Document shall deliver to the Withholding Agent (with a copy to the DIP Agent), at the time or times prescribed by applicable law or reasonably requested by the Withholding Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A) and 5.03(f)(ii)(B) and Section 5.03(g) below) shall not be required if in the Lender's reasonable judgment such

completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a “United States person” as defined in section 7701(a)(30) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent, but only if such Foreign Lender is legally entitled to do so), 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 establishing an exemption from or reduction of, United States federal withholding tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal withholding tax pursuant to the “business profits” or “other income” article of such tax treaty;

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

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

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(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, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-4 on behalf of each such direct and indirect partner; and

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

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

(g) Treatment of Certain Refunds. If the DIP Agent, a Lender or an Issuing Bank determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the DIP Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the DIP Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the DIP Agent, such Lender or such Issuing Bank in the event the DIP Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This Section 5.03 shall not be construed to require the DIP Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

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(h) FATCA. If a payment made to a Lender under this Agreement would be subject to United States federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, the Borrower and the DIP Agent shall treat (and the DIP Agent is authorized to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 5.04 Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the DIP 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 12.04(b)), 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 (i) the Borrower shall have paid to the DIP Agent the process and recording fee specified in Section 12.04(b)(iv), (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Credit Exposure, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04(c) or Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or

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payments thereafter, and (iv) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the DIP Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (without giving effect to clause (c) of the definition of Alternative Base Rate) (and, if such Lender so requests by notice to the Borrower and the DIP Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI CONDITIONS PRECEDENT

Section 6.01 Effective Date. The obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder (exclusive of the Prepetition Letters of Credit) shall not become effective until the Business Day on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Petition Date will have occurred, and each Loan Party will be a debtor and a debtor-in-possession in the Chapter 11 Cases. All "first day orders" entered by the Bankruptcy Court in connection with the commencement of the Chapter 11 Cases (other than the Cash Management Order or the Interim DIP Order), will be satisfactory in form and substance to the Required Lenders;

(b) Not later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order, in form and substance satisfactory to the Required Lenders, which Interim DIP Order shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed;

(c) All fees, costs and expenses required to be have been paid or reimbursed, as set forth herein and in the Loans Documents, the Fee Letter and the Agency Fee Letter shall have been paid or reimbursed or will be paid or reimbursed contemporaneously with the Effective Date;

(d) The Required Lenders and the DIP Agent shall have received and the Required Lenders shall be satisfied with a cash flow forecast for the 13-week period commencing on the Effective Date dated as of a date not more than 2 Business Days prior to the Effective Date (the "**Initial Approved Budget**");

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(e) One or more orders, in form and substance satisfactory to the Required Lenders in all respects, approving such cash management systems and arrangements (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the “**Cash Management Order**”) (it being understood and agreed that (i) an order substantially in a form approved by Lender Counsel shall, if entered by the Bankruptcy Court, be deemed acceptable to the Required Lenders and (ii) for the avoidance of doubt, the Borrower’s cash management systems and arrangements in effect on the Effective Date in accordance with the Prepetition Revolving Credit Agreement shall be deemed acceptable to the Required Lenders) shall have been entered by the Bankruptcy Court, which Cash Management Order shall be in full force and effect and shall not have been (x) stayed, vacated or reversed, or (y) amended or modified except as otherwise agreed to in writing by Lender Counsel or Required Lenders in their sole discretion;

(f) Since December 31, 2018, there shall not have occurred or there shall not exist any event, condition or circumstance that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(g) The DIP Agent and the Required Lenders shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party setting forth (i) resolutions of its board of directors (or its equivalent) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) the officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the Transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the Organization Documents of such Loan Party, certified as being true and complete. The DIP Agent and the Lenders may conclusively rely on such certificate until the DIP Agent receives notice in writing from such Loan Party to the contrary.

(h) The DIP Agent and the Required Lenders shall have received certificates of the appropriate state agencies with respect to the existence, qualification and good standing of each Loan Party in its state of formation.

(i) The DIP Agent and the Required Lenders shall have received a customary closing certificate substantially in the form of Exhibit D-1, duly and properly executed by a Financial Officer and dated as of the Effective Date.

(j) The DIP Agent and the Required Lenders shall have received counterparts of this Agreement, the Guaranty and Collateral Agreement and the Agency Fee Letter, signed on behalf of each party thereto.

(k) The DIP Agent and the Required Lenders shall have received the Financial Statements.

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(l) The DIP Agent and the Required Lenders shall have received from each party thereto duly executed counterparts of the Security Instruments. In connection with the execution and delivery of the Security Instruments, the Required Lenders shall:

(i) be satisfied that the Interim DIP Order or Security Instruments required to be executed on the Effective Date create (or will create, upon proper filing, recording or registration thereof, or upon entry of, the Interim DIP Order) perfected Liens having the priorities set forth in the Interim DIP Order (subject only to Excepted Liens on all of the tangible and intangible Property of the Loan Parties other than *de minimis* Property excluded in the DIP Agent's sole discretion); and

(ii) have received (or its bailee pursuant to the Interim DIP Order has received) certificates (if any), together with undated, blank stock powers for each such certificate, representing all of the issued and outstanding Equity Interests of each of the Loan Parties (other than the Borrower), to the extent certificated.

(iii) The DIP Agent shall have received an opinion of Davis Polk & Wardwell LLP, special counsel to the Borrower in form and substance satisfactory to the DIP Agent, the Required Lenders and their counsel.

(m) [Reserved].

(n) The DIP Agent and the Required Lenders shall have received appropriate UCC search results satisfactory to DIP Lenders or the Required Lenders reflecting no prior Liens encumbering the Properties of the Borrower and the Subsidiaries; other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(o) Subject to Section 8.20, each document (including any Uniform Commercial Code financing statement) required by this Agreement or under law or reasonably requested by the DIP Agent or the Required Lenders to be filed, registered or recorded in order to create in favor of the DIP Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein having the priorities set forth in the DIP Orders, shall be in proper form for filing, registration or recordation.

(p) The DIP Agent and the Lenders shall have received from the Loan Parties, to the extent requested by the Lenders or the DIP Agent, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(q) The DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the DIP Agent shall have

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received notice from such Lender prior to the Effective Date specifying its objection thereto. At the request of the Required Lenders, the DIP Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) at or prior to 5:00 p.m., New York City time, on [●] (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 6.02 Each Subsequent Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, extend the Scheduled Maturity Date in accordance with the definition thereof or withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, and each Issuing Bank to issue, amend, renew or extend any Letter of Credit, in each case, after the Effective Date, is subject to the satisfaction of the following conditions:

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

(b) The representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representations and warranties are qualified by materiality, such representations and warranties shall continue to be true and correct in all respects.

(c) In the case of an issuance, amendment, renewal or extension of a Letter of Credit or the withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, the applicable Issuing Bank and the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03, a Letter of Credit Withdrawal Notice in accordance with Section 2.07(j) or a request for a Letter of Credit and related Letter of Credit Agreement in accordance with Section 2.07(b), as applicable.

(d) Solely with respect to the Delayed Draw DIP Term Loan, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance reasonably satisfactory to the Required Lenders and the DIP Agent shall have received a signed copy of such Final Order, which Final DIP Order has not been vacated, reversed, modified, amended or stayed; *provided*, for the avoidance of doubt, no Lender holding Delayed Draw DIP Term Commitments shall be required to fund any Delayed Draw DIP Term Loans to the extent that the Final DIP Order does

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not approve the Roll-Up that is to be consummated on the Delayed Draw DIP Funding Date pursuant to Section 2.01(d).

(e) The Final DIP Order shall have been entered by the Bankruptcy Court no later than noon (12:00 p.m.) Eastern Time on the initial Delayed Draw DIP Funding Date.

(f) In the case of a Borrowing of Delayed Draw DIP Term Loans, the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit and each acceptance of the foregoing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 6.02(a) and (b).

ARTICLE VII REPRESENTATIONS AND WARRANTIES

The Borrower (on behalf of itself and its Subsidiaries), and each Guarantor by its execution of the Guaranty and Collateral Agreement, represents and warrants to the DIP Agent, any Issuing Banks and the Lenders that:

Section 7.01 Organization; Powers. Each of the Borrower and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which a Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, as applicable, enforceable in accordance with its terms, except as may be limited by the DIP Orders.

Section 7.03 Approvals; No Conflicts. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing

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of the Security Instruments as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect or do not have an adverse effect on the enforceability of the Loan Documents, (b) will not violate (i) any applicable law or regulation, (ii) any Organization Documents of the Borrower or any Subsidiary, or (iii) any order of any Governmental Authority, (c) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any indenture or other agreement regarding Indebtedness of the Borrower or any Subsidiary or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, (d) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any other agreement or other instrument binding upon the Borrower or any Subsidiary, or its Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, other than such violations or defaults which would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect, or do not have an adverse effect on the enforceability of any Loan Documents, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04 Financial Condition; No Material Adverse Change.

(a) All financial statements relating to any Loan Party which have been or may hereafter be delivered by any Loan Party to the DIP Agent and the Lenders pursuant to the terms of the Agreement have been prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods. The representations in this Section 7.04(a), as applicable, are subject, in the case of unaudited financial statements, to normal year-end audit adjustments and accruals and the absence of notes.

(b) Since December 31, 2018, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Indebtedness (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Financial Statements.

(d) A true and complete copy of the Initial Approved Budget, as agreed to by the Required Lenders, as of the Effective Date, is attached as Annex IV hereto.

(e) Each Proposed Budget and any other projections regarding the financial performance of the Borrower and its Consolidated Subsidiaries which have been or may hereafter be delivered to DIP Agent and the Lenders have been prepared on a reasonable basis

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and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided (and on the Effective Date in the case of forecasts provided prior to the Effective Date) and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that neither the Borrower nor any Subsidiary makes any representation that such projections will be realized). [No facts exist that, individually or in the aggregate, would result in any material change in the Approved Budget (subject to Permitted Variances).]

Section 7.05 Litigation. Other than the Chapter 11 Cases, there are no unstayed actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Subsidiary, or any of their Properties (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (b) that involve any Loan Document or the Transactions.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

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

(b) the Borrower and the Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Borrower or the Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary contain or have contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to

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CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

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

(f) neither the Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation, and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Borrower has provided, or has caused its Subsidiaries to provide, to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or the Subsidiaries' possession or control and relating to their respective Properties or operations thereon.

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

(a) Each of the Borrower and each Subsidiary is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than as result of the commencement of the Chapter 11 Cases, neither the Borrower nor any Subsidiary is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or a Subsidiary to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any

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Material Indebtedness is outstanding or by which the Borrower or any Subsidiary or any of their Properties is bound, except where enforcement is stayed upon commencement of the Chapter 11 Cases.

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Borrower nor any Subsidiary is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Except as set forth on Schedule 7.09, each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed. Each of the Borrower and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes for which payment is stayed or excused under the Bankruptcy Code or that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No currently outstanding Tax Lien has been filed against the Borrower, any of the Subsidiaries, or any of their respective Properties, and, to the knowledge of the Borrower, no claim is being asserted against the Borrower, any of the Subsidiaries, or any of their respective Properties with respect to any such Tax or other such governmental charge in each case, except with respect to Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 7.10 ERISA.

(a) The Borrower, the Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code, except where the failure to so establish and maintain such Plan could not reasonably be expected to have a Material Adverse Effect.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts which the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former

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employees of such entities, with respect to which its sponsorship of, maintenance of or contribution to may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11 Disclosure; No Material Misstatements. The Borrower has disclosed to the DIP Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the DIP Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such projected financial information was made available and such projections reflect the good faith and reasonable estimates of the Borrower of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein, it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information.

Section 7.12 Insurance. Each Loan Party has, and has caused all of its Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements, including, without limitation, Flood Insurance, if required, with respect to any Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the DIP Orders and/or Security Instruments, and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and of comparable size and engaged in the same or a similar business for the assets and operations of the Borrower and its Subsidiaries. Subject to Section 8.20, the DIP Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies, and the DIP Agent has been named as loss payee with respect to Property loss insurance.

Section 7.13 Restriction on Liens. Neither the Borrower nor any of the Subsidiaries is a party to any material agreement or arrangement (other than (a) the "Loan Documents" under and as defined in the Prepetition Term Loan Agreement and the "Loan Documents" under and as

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defined in the Prepetition Revolving Loan Agreement, (b) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (c) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (d) documents creating Liens which are described in clauses (g) or (h) of the definition of “Excepted Liens”, but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h), (e) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any Subsidiary pending the consummation of such sale, (f) [reserved], (g) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (h) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein)), or subject to any order, judgment, writ or decree (other than the DIP Orders), which either restricts or purports to restrict its ability to grant Liens to the DIP Agent for the benefit of the Secured Parties on or in respect of its Properties to secure the Secured Obligations and the Loan Documents.

Section 7.14 Subsidiaries. Except as set forth on Schedule 7.14, the Borrower has no Subsidiaries. Each Person on Schedule 7.14 is a Wholly-Owned Subsidiary. The Borrower has no Foreign Subsidiaries. All of the outstanding Equity Interests of each Subsidiary has been validly issued, is fully paid, is nonassessable and has not been issued in violation of any preemptive or similar rights. Schedule 7.14 also sets forth the holders (and percentages of ownership) of the Equity Interests in each of the Subsidiaries as of the Effective Date.

Section 7.15 Location of Business and Offices. The Borrower’s jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is Southcross Energy Partners, L.P.; and the organizational identification number of the Borrower in its jurisdiction of organization is 5138791 (or, in each case, as set forth in a notice delivered to the DIP Agent pursuant to Section 8.01(j) in accordance with Section 12.01). The Borrower’s principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(j) and Section 12.01(c)).

Section 7.16 Properties; Titles, Etc.

(a) Each of the Borrower and the Subsidiaries has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its real and personal Property except for defects that, individually or in the aggregate, (i) do not materially interfere with the ordinary conduct of its business and (ii) could not reasonably be expected to have a Material Adverse Effect. All such Property is free and clear of all Liens except Liens permitted by Section 9.03.

(b) All leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full

force and effect, and, other than the commencement of the Chapter 11 Cases, there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any material lease or leases, the enforcement of which has not been stayed.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been conducted prior to the date hereof (subject to any changes to the business resulting from transactions permitted hereunder).

(d) The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property rights (“**Intellectual Property**”) material to its business, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and such Subsidiary does not infringe upon the rights of any other Person in any material respect.

Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the offices, plants, gas processing plants, platforms, pipelines, improvements, fixtures, equipment, and other Property owned, leased or used by the Borrower and its Subsidiaries in the conduct of their businesses are (a) being maintained in a state adequate to conduct normal operations, (b) structurally sound with no known defects, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair, (e) sufficient for the operation of the businesses of the Borrower and its Subsidiaries as currently conducted, and (f) in conformity with all Governmental Requirements relating thereto.

Section 7.18 Hedging Agreements. Schedule 7.18, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to Section 8.01(e), sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

Section 7.19 Security Instruments. The Interim DIP Order and/or the Final DIP Order are effective to create, in favor of the DIP Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and perfected security interest in, all of the Collateral described in the Interim DIP Order and/or Final DIP Order. Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect such Liens and security interests, and upon entry by the Bankruptcy Court, the Liens and security interests created by the Interim DIP Order and/or the Final DIP Order shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby, in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Pursuant to and to the extent provided in the Interim DIP Order and/or the Final DIP Order, the Secured Obligations of the Loan Parties hereunder

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will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all superpriority administrative expense claims granted to any other Person, subject only to the Carve-Out.

Section 7.20 Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used for the purposes specified in Section 8.22. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used for any purpose which violates the provisions of (a) Regulations T, U or X or any other regulation of the Board, (b) any Sanctions, or (c) the FCPA.

Section 7.21 [Reserved.]

Section 7.22 Common Enterprise. Each of the Borrower and its Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrower and its Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

Section 7.23 Material Contracts. Schedule 7.23 hereto contains a complete list, as of the Effective Date, of all Material Contracts of the Borrower and each Subsidiary, including all amendments thereto. All Material Contracts are in full force and effect, neither the Borrower nor any Subsidiary is in default under any Material Contract other than as result of the commencement of the Chapter 11 Cases, and to the knowledge of the Borrower and each Subsidiary after due inquiry, no other Person that is party thereto is in default under any Material Contract, except for such defaults as could not be reasonably expected to have a Material Adverse Effect or where enforcement is stayed upon commencement of the Chapter 11 Cases. None of the Material Contracts prohibits the transactions contemplated under the Loan Documents. Each of the Material Contracts is currently in the name of, or has been assigned to, a Loan Party (with the consent or acceptance of each other party thereto if and to the extent that such consent or acceptance is required thereunder), each of the Material Contracts is assignable to the DIP Agent as collateral, and each of the Material Contracts is assignable, unless waived by the DIP Agent in its reasonable discretion, by the DIP Agent to a reasonably acceptable transferee if an Event of Default were to occur. The Borrower and its Subsidiaries have delivered to the DIP Agent a complete and current copy of each of their Material Contracts existing on the Effective Date.

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Section 7.24 Broker's Fees. Except as set forth in Schedule 7.24, no broker's or finder's fee, commission or similar compensation will be payable by the Borrower or any Subsidiary with respect to the Transactions.

Section 7.25 Employee Matters. As of the Effective Date, (a) neither the Borrower nor any Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower or any Subsidiary after due inquiry, threatened between the Borrower or any Subsidiary and its respective employees.

Section 7.26 Anti-Terrorism Laws.

(a) The Borrower is not, and to the knowledge of the Borrower, none of the Borrower's Affiliates, officers or directors is in violation of any Governmental Requirement relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), the USA Patriot Act, and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., in each case, as amended from time to time.

(b) The Borrower is not, and to the knowledge of the Borrower, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the

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Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) (i) Neither the Borrower nor any of its subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries, is currently, or is owned or controlled by Persons that are currently (A) the subject of any material United States sanctions administered or enforced by OFAC or the United States Department of State (collectively, “**Sanctions**”) or (B) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, and (ii) the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the subject of Sanctions.

Section 7.27 Foreign Corrupt Practices. No Loan Party, and, to the knowledge of the Borrower, no director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Loan Parties and, to the knowledge of the Borrower, their Affiliates have conducted their business in material compliance with the FCPA.

Section 7.28 DIP Orders. The Loan Parties are in compliance with the terms and conditions of the DIP Orders.

ARTICLE VIII AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement, covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 8.01 Financial Statements; Ratings Change; Other Information. The Borrower will furnish to the DIP Agent for, except as otherwise set forth below, delivery to each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than ninety (90) days after the end of the fiscal year, its audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit other than a “going concern” qualification) to the effect

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that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event not later than forty-five (45) days after the end of the fiscal quarter, commencing with the fiscal quarter ending March 31, 2019, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved].

(d) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements required pursuant to Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit D hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) stating whether any change in GAAP or in the application thereof has occurred since December 31, 2018 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(e) Certificate of Financial Officer – Hedging Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), a certificate of a Financial Officer, in substantially the form of Schedule 7.18, setting forth as of the last Business Day of such fiscal quarter or fiscal year, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) [reserved].

(g) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by the Borrower or any such Subsidiary, or the board of directors (or comparable governing body) of the Borrower or any such Subsidiary, to such letter or report.

(h) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or with any national or foreign

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securities exchange, or required by applicable law to be distributed by the Borrower to its equityholders generally, as the case may be.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any order of the Bankruptcy Court or any Material Indebtedness, other than the Loan Documents, and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Information Regarding Loan Parties. Promptly (and in any event within ten (10) Business Days (or such later time as the DIP Agent may agree) written notice of any change (i) any Loan Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in any Loan Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Loan Party's federal taxpayer identification number.

(k) Notices of Certain Changes. Except in connection with Organization Documents of the Borrower and its Subsidiaries that are delivered pursuant to Section 6.01(h), promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation, certificate or articles of formation or organization, any preferred stock designation or any other public organic document of the Borrower or any Subsidiary.

(l) [reserved].

(m) [reserved].

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, liquidity, business plan, contract negotiations, financial condition and projections of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones, or compliance with the terms of this Agreement or any other Loan Document, as the DIP Agent or any Lender may reasonably request.

(o) Monthly Financial Statements. As soon as available but in any event within thirty-five (35) calendar days after the end of each calendar month, solely with respect to the first two calendar months of each fiscal quarter, its unaudited consolidated balance sheet and related statements of income or operations and cash flows reflecting results of operations as of the end of and for such calendar month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods (or in the case of the balance sheet, as of the end) of the previous fiscal year, all in form satisfactory to the DIP Agent or the Lender Financial Advisor and certified by one of its Financial Officers as

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presenting fairly in all material respects the financial condition and the results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal quarter-end or year-end adjustments, as the case may be, and the absence of footnotes. Concurrently with any delivery of financial statements required pursuant to this Section 8.01(o), the Borrower will furnish to the DIP Agent and each Lender a certificate of a Financial Officer in substantially the form of Exhibit D-3 hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto. It is understood that the materials provided to the DIP Agent and the Lenders pursuant to this clause (o), in accordance with the last sentence of this Section 8.01, will not be identified by the Borrower as “Public” information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated “Public Side Information”.

(p) Ratings Updates. Any reports, information, documentation or other evidence required by and in accordance with Section 8.16.

(q) Budget Updates and Variance Reports.

(i) To the DIP Agent and the financial advisors to the Lenders, as soon as available, but in any event not later than May 1, 2019, and on the Wednesday (or next preceding Business Day if such Wednesday is not a Business Day) of every fourth week thereafter, proposed updated 13-week cash flow forecast (the “Proposed Budget”), containing items of sufficient detail with respect to the Loan Parties for the immediately succeeding consecutive 13 weeks, in the form of the Initial Approved Budget, and otherwise in form and substance acceptable to financial advisors to Lenders, acting at the direction of the Required Lenders, setting forth all anticipated sources and uses of cash and beginning and ending cash balances for such 13-week period, together with a certificate of a Responsible Officer of the Borrower stating that such 13-week cash flow forecast has been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ substantially from the projected results). To the extent such Proposed Budget is approved by financial advisors to the Lenders, acting at the direction of the Required Lenders, such Proposed Budget shall thereafter be the “Approved Budget” for such period contained therein and for all purposes hereunder and under the DIP Orders. No such Proposed Budget shall become an Approved Budget until so approved; *provided* that if such financial advisors have not objected to such forecast within five (5) Business Days after delivery thereof, such Proposed Budget shall be deemed to be acceptable to and approved by the financial advisors to the Lenders acting at the direction of the Required Lenders. Approval of any Proposed

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Budget shall be evidenced by a writing delivered (which may be through electronic transmission) by the financial advisors to the Lenders acting at the direction of the Required Lenders (which may be made by their agent (including the DIP Agent) or its or their counsel or financial advisors) or by the Borrower in the case of deemed approvals. In the event that any Proposed Budget is not so approved, the last Approved Budget without giving effect to any update, modification or supplement shall remain in effect.

(ii) To the DIP Agent and the financial advisors to the Lenders, on the Wednesday of each calendar week or next preceding Business Day if such Wednesday is not a Business Day (each such delivery date, a “**Variance Testing Date**”), a variance report (each, a “**Variance Report**”), in form and detail reasonably satisfactory to the Required Lenders, reconciling the Approved Budget to the actual sources and uses of cash for (i) the immediately preceding full calendar week (ending on a Saturday) and (ii) the Testing Period, (A) showing, for such periods, actual results for the following items: (1) cash receipts, (2) cash disbursements, (3) net cash flow, (4) professional fees, (5) capital expenditures and (6) billings, (B) noting a line-by-line reconciliation of variances from values set forth for such periods in the relevant Approved Budget and (C) providing an explanation for all material variances, certified by a Responsible Officer of the Borrower. Each Variance Report delivered pursuant to this Section 8.01(q) shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent or the Lender Financial Advisor.

(r) Real Property Report. Concurrently with the delivery of the financial statements under Section 8.01(b), but in any event not later than 45 days after the end of each fiscal quarter, (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders) not to exceed 15 days), a certificate of a Financial Officer setting forth as of the last Business Day of such fiscal quarter, title information in form and substance acceptable to the DIP Agent (acting at the direction of the Required Lenders) with respect to any real Property acquired by the Borrower and its Subsidiaries during such fiscal quarter for consideration in excess of \$1,000,000, individually or in the aggregate.

Information required to be delivered pursuant to Section 8.01(a), (b) or (n) shall be deemed to have been delivered if such information is available on the website of the SEC and the Borrower has delivered notice to the DIP Agent that such reports are so available, which notice may be provided in any certificate delivered pursuant to Section 8.01(d).

The Borrower hereby acknowledges that (a) the DIP Agent may, but shall not be obligated to, make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to the General Partner or the Loan Parties, 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. The Borrower hereby agrees that so long as the Borrower is the issuer of any

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outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the DIP Agent, the Issuing Banks 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 the Borrower 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 12.11); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the DIP Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the following Borrower Materials shall be deemed “PUBLIC,” unless the Borrower notifies the DIP Agent promptly that any such document contains material non-public information: (1) the Loan Documents and (2) notification of changes in the terms of the Credit Facility.

Section 8.02 Notices of Material Events. The Borrower will furnish to the DIP Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000;
- (d) any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles; and
- (e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04 Payment of Tax Obligations. The Borrower will, and will cause each Subsidiary to, pay its Tax liabilities constituting postpetition obligations that constitute administrative expenses in the Chapter 11 Cases under the Bankruptcy Code or otherwise ordered by the Bankruptcy Court, before the same shall become delinquent or in default; *provided*, that the obligations hereunder are subject to the provisions of the Bankruptcy Code and any required approvals by an applicable order of the Bankruptcy Court.

Section 8.05 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the reading, tenor and effect thereof, and the Borrower will, and will cause each Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at or within the time or times and in the manner specified.

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

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) preserve, maintain and keep in good repair, condition, working order and efficiency (ordinary wear and tear excepted) all of its Properties, including, without limitation, all equipment, machinery and facilities, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and

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(d) to the extent the Borrower is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator of such Property to comply with this Section 8.06 in accordance with customary industry practices.

Section 8.07 Insurance. Subject to Section 8.20, the Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (i) in such amounts and against such risks as are customarily maintained by companies of similar size engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance), and (ii) in accordance with all Governmental Requirements, including, without limitation, Flood Insurance, if required. Subject to Section 8.20, insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to the DIP Agent (on behalf of the Lenders) as its interests may appear, and such policies shall name the DIP Agent as an “additional insured” (in the case of liability insurance) or “lender’s loss payable” (in the case of property insurance) on behalf of the Lenders, and provide that the insurer will give at least thirty (30) days’ prior notice of any cancellation to the DIP Agent. Each of the parties hereto acknowledges and agrees that any increase, extension or renewal of any of the Commitments or Loans (other than as contemplated in the definition of “Scheduled Maturity Date”) or the making of any new, additional or incremental facilities shall be subject to (and conditioned upon) the prior delivery to the DIP Agent of all Flood Zone Documentation.

Section 8.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Subsidiary to maintain financial records in accordance with GAAP. The Borrower will, and will cause each Subsidiary to, permit any representatives designated by the DIP Agent or any Lender, upon reasonable prior notice and during normal business hours (unless an Exigent Circumstance or an Event of Default then exists), at the Loan Parties’ expense, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its Responsible Officers and independent accountants, all at such reasonable times (unless an Exigent Circumstance or Event of Default then exists) and as often as reasonably requested (*provided* that the DIP Agent shall give the Borrower reasonable advance notice of any proposed discussion with such accountants (unless an Exigent Circumstance or an Event of Default then exists) and permit the Borrower and its representatives to be present during such discussions).

Section 8.09 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Agreements. The Borrower will, and will cause each Subsidiary to, comply with all agreements, contracts and instruments binding on it or affecting its Properties or business, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 8.11 Environmental Matters.

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(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and shall cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except in compliance with applicable Environmental Laws, if the Release or threatened Release could reasonably be expected to have a Material Adverse Effect; (iii) timely obtain, file or prepare, and shall cause each Subsidiary to timely obtain, file or prepare, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Subsidiaries' Properties, except where such failure to obtain or file could not reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and shall cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the **"Remedial Work"**) in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, if failure to commence and diligently prosecute to completion could reasonably be expected to have a Material Adverse Effect; (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for material damages or compensation; and (vi) establish and implement, and shall cause each Subsidiary to establish and implement, such procedures as may be necessary to continuously determine and assure that the Borrower's and its Subsidiaries' obligations under this Section 8.11(a) are timely and fully satisfied, which failure to establish and implement such procedures could reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will, and will cause each Subsidiary to, provide existing Phase I site assessments, to the extent they are available, upon request by the DIP Agent or the Lenders, in connection with any future acquisitions of Properties; *provided* that for the avoidance of doubt, there shall be no obligation under this Section for the Borrower to obtain such assessments.

Section 8.12 Further Assurances.

(a) The Borrower at its sole expense will, and will cause each Subsidiary to, promptly execute and deliver to the DIP Agent all such other documents, agreements and instruments reasonably requested by the DIP Agent or the Required Lenders to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created

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pursuant to this Agreement, the Interim DIP Order or the Final DIP Order or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the sole discretion of the DIP Agent, in connection therewith.

(b) Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect the Liens and security interests created pursuant to this Agreement, the DIP Orders or any other Security Instrument. Upon entry by the Bankruptcy Court, the Liens and security interests created by the DIP Orders shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby (including after-acquired Collateral), in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Notwithstanding the foregoing, upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions requested, with respect to any Material Real Property and any other tangible and intangible personal Property of the Borrower or any Loan Party, in each case constituting Collateral, to cause such Material Real Property and Collateral to be subject to a Lien pursuant to the Security Instruments or the DIP Order or to evidence the Lien on such Property, including to execute and deliver such Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the DIP Agent or the Required Lenders, and take such actions necessary or advisable to subject such Property to a Lien or evidence of the Lien on such Property pursuant to the Security Instruments.

(c) Upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions required, if any, to cause all of its right, title and interest in each Hedging Agreement to which it is a party to be collaterally assigned to the DIP Agent, for the benefit of the Secured Parties, and shall, if requested by the DIP Agent or the Required Lenders, use its commercially reasonable efforts to cause each such agreement or contract to (i) expressly permit such assignment and (ii) upon the occurrence of any default or event of default under such agreement or contract, (A) to permit the Lenders to cure such default or event of default and assume the obligations of such Loan Party under such agreement or contract and (B) to prohibit the termination of such agreement or contract by the counterparty thereto if the Lenders assume the obligations of such Loan Party under such agreement or contract and the Lenders take the actions required under the foregoing clause (A).

Section 8.13 Title Information. If the Borrower or any Subsidiary acquires any new pipeline and processing Properties for consideration in excess of \$5,000,000, individually or in the aggregate, the Borrower shall, or shall cause such Subsidiary to, provide promptly (and in any event within 30 days (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders))), title information regarding such new pipeline and processing Properties to the DIP Agent. The Borrower shall, within sixty (60) days of notice from the DIP Agent (or such later date as the DIP Agent may agree in its sole discretion) that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03 raised by such information to the reasonable satisfaction of the DIP Agent, or (ii) deliver title information in form and substance acceptable to the DIP Agent

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(acting at the direction of the Required Lenders) so that the DIP Agent shall have received, together with title information previously delivered to the DIP Agent, title information reasonably satisfactory to the DIP Agent relative to the pipeline and processing Properties of the Borrower and its Subsidiaries.

Section 8.14 [Reserved].

Section 8.15 [Reserved].

Section 8.16 Ratings. The Borrower shall use commercially reasonable efforts to obtain a rating for the Credit Facility from both S&P and Moody's on or prior to the hearing to consider approval of the Final DIP Order; *provided* that if the Borrower is unable to obtain both ratings for the Credit Facility on or prior to such date, the Borrower shall (i) thereafter use its commercially reasonable efforts to obtain both ratings for the Credit Facility as soon as possible, and (ii) promptly provide to the DIP Agent any other information, documentation or other evidence reasonably requested by the DIP Agent or the Required Lenders in connection with the subject matter of this Section 8.16.

Section 8.17 ERISA Compliance. The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the DIP Agent (a) promptly after the filing thereof by the Borrower or any Subsidiary with the United States Secretary of Labor or the Internal Revenue Service (or if filed by a third party, promptly after the Borrower or a Subsidiary becomes aware of such filing), copies of each annual and other report with respect to each Plan or any trust created thereunder, and (b) promptly upon becoming aware of the occurrence of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, the Subsidiary or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

Section 8.18 [Reserved].

Section 8.19 [Reserved].

Section 8.20 Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, as the case may be, each of the items set forth on Schedule 8.20, in each case on or prior to the date specified in such Schedule for such item or such later date as the DIP Agent may determine and agree to in writing in its sole discretion.

Section 8.21 Use of Proceeds. The Borrower shall use the proceeds from the Loans and the issuance of the Letters of Credit hereunder solely (i) to finance working capital and for general corporate purposes of the Borrower and its Subsidiaries (including to conduct the Section 363 Sale process and including Professional Fees approved by the Bankruptcy Court), to the extent such expenses are of the kind described in and in amounts shown in the Approved Budget (subject to Permitted Variances) and including the Roll-Up of Prepetition Term Loans as provided in Section 2.01(d) and the cash collateralization of the Letters of Credit pursuant to

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Section 2.07(j), (ii) to deem to be cancelled and reissue the Prepetition Letters of Credit as provided in Section 2.07(b), (iii) to pay fees, costs and expenses incurred by the DIP Agent and the Lenders in connection with the Transactions and other fees, costs and expenses of the DIP Agent and the Lenders to the extent reimbursable hereunder, (iv) to make adequate protection payments as permitted or required by the DIP Orders, and (v) to fund the Carve-Out in accordance with the DIP Orders. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of the Loans or the Letters of Credit hereunder be used to pay [Professional Fees] incurred in connection with a Prohibited Purpose (as defined in the DIP Orders). Nothing in this Section 8.22 shall be construed to waive the DIP Agent's or any Lender's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court.

Section 8.22 Lender Calls. Upon request of the DIP Agent at the direction of the Required Lenders, the Borrower shall arrange for conference calls, which call shall occur not more frequently than once per calendar week, discussing and analyzing the Approved Budget (or other 13-week cash flow forecasts furnished pursuant to Section 8.01) for the prior week, the Variance Reports, the financial condition, business operations, liquidity, business plan, contract negotiations and projections of each of the Loan Parties, the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones.

Section 8.23 Case Milestones. Each Loan Party shall ensure that each of the milestones set forth below (the "**Case Milestones**") is achieved in accordance with the applicable timing referred to below (or such later dates as approved in writing by the Required Lenders):

(a) On the Petition Date, the Loan Parties shall have filed a motion seeking approval of the DIP Orders, in form and substance acceptable to the Required Lenders in all respects.

(b) Not later than five (5) Business Days after the Petition Date (or such later date approved in writing by the Required Lenders), the Interim DIP Order shall have been entered by the Bankruptcy Court and such Interim DIP Order shall be in full force and effect and shall not have been (i) vacated, reversed, or stayed, or (ii) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(c) Not later than the date that is forty (40) days following the Petition Date (or such later date approved in writing by the Required Lenders), the Bankruptcy Court shall have entered the Final DIP Order and such Final DIP Order shall be in full force and effect and shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(d) Not later than fifty (50) days after the Petition Date, the Loan Parties shall have received non-binding first-round indications of interest from potential purchasers of all or substantially all of the Loan Parties' assets.

(e) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have not reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue a Section 363 Sale. In connection with a Section 363 Sale, the Loan Parties and the

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Required Lenders shall negotiate in good faith a reasonable wind-down budget (the “**Wind-Down Budget**”) to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties’ estates on a reasonable and appropriate timeline.

(f) If, pursuant to Section 8.23(e), a Section 363 Sale is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed a motion in the Bankruptcy Court in form and substance acceptable to the Required Lenders, seeking approval of (a) a sale (the “**Sale Transaction**”) of substantially all assets of the Loan Parties, and (b) bidding procedures (the “**Bid Procedures**”) and related relief in connection with the Sale Transaction (the “**Bid Procedures and Sale Motion**”).

(ii) Not later than eighty (80) days after the Petition Date, (a) the Loan Parties shall have scheduled a hearing on the Bid Procedures Motion, and (b) the Loan Parties shall have obtained entry of an order, in form and substance acceptable to the Required Lenders (the “**Bid Procedures Order**”), approving the Bid Procedures and setting a date for the hearing to approve the Sale Transaction (the “**Sale Hearing**”).

(iii) Not later than one hundred (100) days after the Petition Date, the Loan Parties shall have established the final deadline to receive qualified bids, and shall have received such qualified bids (the “**Bid Deadline**”).

(iv) Not later than two (2) weeks after the Bid Deadline, the Loan Parties shall have obtained entry of a Final Order by the Bankruptcy Court (the “**Sale Approval Order**”), in form and substance acceptable to the Required Lenders in all respects.

(v) Not later than the earlier of (i) thirty (30) days after entry of the Sale Approval Order and (ii) the Maturity Date, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by payment of such DIP Term Loans and Roll-Up Loans in full, in cash (subject to the Wind-Down Budget).

(g) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue such Acceptable Plan. If pursuant to this Section 8.23(g), an Acceptable Plan is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed in the Bankruptcy Court an Acceptable Plan, a corresponding disclosure statement (the “**Disclosure Statement**”), and a motion seeking approval of the Disclosure Statement, in each case, in form and substance acceptable to the Required Lenders.

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(ii) Not later than ninety five (95) days after the Petition Date, the Loan Parties shall have scheduled a hearing on approval of the Disclosure Statement and obtained entry of the order by the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Required Lenders.

(iii) Not later than one hundred forty five (145) days after the Petition Date, the Loan Parties shall have scheduled a hearing to confirm the Acceptable Plan and obtained entry by the Bankruptcy Court of the order confirming the Acceptable Plan (the “**Confirmation Order**”), in form and substance acceptable to the Required Lenders.

(h) Not later than thirty (30) days after entry of the Confirmation Order, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by (i) payment of such DIP Term Loans and Roll-Up Loans in full, in cash or (ii) such other treatment as acceptable to the Required Lenders.

Section 8.24 Certain Bankruptcy Matters; Case Documents.

(a) The Loan Parties shall, and shall cause each of their Subsidiaries to, comply (i) in all respects, after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) in all respects, after entry thereof, with each order of the type referred to in clause (b) of the definition of “Approved Bankruptcy Court Order”, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (b) of the definition of “Approved Bankruptcy Court Order,” and (iii) in all material respects, after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Loan Parties’ “first day” and “second day” relief obtained in the Chapter 11 Cases, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time with the approval of the DIP Agent and the Required Lenders.

(b) The Borrower shall provide at least five (5) Business Days’ (or such shorter notice acceptable to the Required Lenders in their sole discretion) prior written notice to the DIP Agent or its advisors prior to any assumption or rejection of any Loan Party’s Material Contracts pursuant to Section 365 of the Bankruptcy Code, and no such Material Contract shall be assumed or rejected, if such assumption or rejection adversely impacts the Collateral, any Liens thereon or any superpriority claims payable therefrom (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims).

(c) As soon as practicable in advance of filing with the Bankruptcy Court of any document, motion or pleading relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Credit Facility, the DIP Orders, the Cash Management Order, the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral,

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(v) debtor-in-possession financing, (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, (viii) any Section 363 Sale, or (ix) any transaction outside of the ordinary course of business with any Loan Party, the Loan Parties will deliver to the DIP Agent for delivery to [each Lender] all such documents to be filed and provide the DIP Agent and the Lenders with a reasonable opportunity to review and comment on all such documents.

(d) Promptly following receipt thereof (and in any event within one (1) Business Day after receipt thereof), the Loan Parties shall deliver to the professional advisors to the Lenders copies of all formal proposals, letters of interest, letters of intent, bids, agreements and any final proposed definitive documentation for any sale of all or any material portion of its the Loan Parties' assets or any other investment pursuant to which additional capital is to be received by the Loan Parties.

(e) It is understood that the materials provided to the DIP Agent and the Lenders pursuant to Sections 8.23(b) and (c) will not be identified by the Borrower as "Public" information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated "Public Side Information". It is understood that the materials provided to the DIP Agent and the Lenders' professional advisors pursuant to Section 8.23(d) will be provided solely on a "professional eyes only" basis.

ARTICLE IX NEGATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement) covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 9.01 Budget Variances. As of any Variance Testing Date, the Loan Parties shall not allow the [Total Cash Receipts] or the [Total Cash Disbursements] (in each case, as such terms are used in the applicable Approved Budget) to exceed the aggregate amount forecasted therefor in the Approved Budget for such [Testing Period] by more than the Permitted Variances for the period applicable thereto under Annex III (the "**Permitted Variances**").

Section 9.02 Indebtedness. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations arising under the DIP Orders and the Loan Documents, or with respect to any Bank Products, or any guaranty of or suretyship arrangement for the Secured Obligations arising under the Loan Documents, or with respect to any Bank Products;

(b) Indebtedness under Capital Leases or that constitutes Purchase Money Indebtedness; *provided* that the aggregate amount of all Indebtedness described in this Section 9.02(b) at any one time outstanding shall not to exceed \$[500,000] in the aggregate;

(c) Indebtedness associated with performance bonds, bid bonds, surety bonds, appeal bonds or customs bonds required in the ordinary course of business or in connection with

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the enforcement of rights or claims of the Borrower or any Subsidiary or in connection with judgments that do not result in a Default;

(d) unsecured intercompany Indebtedness between the Borrower and any Subsidiary or between Subsidiaries to the extent permitted by Section 9.05(g); *provided* that such Indebtedness is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Wholly-Owned Subsidiaries, and, *provided, further*, that any such Indebtedness owed by a Loan Party shall be subordinated to the Secured Obligations on terms set forth in the Guaranty and Collateral Agreement;

(e) Indebtedness constituting a guaranty by any Loan Party of Indebtedness permitted to be incurred by any other Loan Party under this Section 9.02; *provided* that if the Indebtedness being guaranteed is subordinated to the Secured Obligations, such guaranty shall be subordinated to the Guarantee of the Secured Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such guaranteed Indebtedness;

(f) endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or as otherwise approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order, so long as such Indebtedness shall not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the underlying policy;

(h) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft, payment order or other debit drawn, presented or issued against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence or (ii) arising under any Bank Products provided by a bank or other financial institution to the Loan Parties in the ordinary course of business and pursuant to, or in accordance with, the Cash Management Order;

(i) other unsecured Indebtedness not to exceed [\$1,000,000] in the aggregate at any one time outstanding;

(j) Indebtedness outstanding on the Effective Date consisting of Prepetition Term Loans incurred under the Prepetition Term Loan Facility and Prepetition Revolving Loans incurred under the Prepetition Revolving Loan Facility;

(k) Indebtedness outstanding on the Effective Date that is disclosed to the Lenders in Schedule 9.02.

Section 9.03 Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Secured Obligations pursuant to the DIP Orders and other Security Instruments;

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(b) Excepted Liens;

(c) Liens securing Capital Leases and Purchase Money Indebtedness permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Indebtedness, as applicable;

(d) Liens on proceeds of Letters of Credit permitted to be posted in connection with Hedging Agreements permitted by Section 9.17;

(e) (i) pledges and deposits of cash in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person and (ii) Liens on proceeds of insurance policies securing Indebtedness permitted under Section 9.02(g);

(f) Liens on cash earnest money or escrowed deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 9.05, to be applied against the purchase price for and indemnities with respect to such Investment, solely to the extent such Investment would have been permitted on the date of the creation of such Lien;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(h) Liens on Collateral securing Indebtedness permitted by Section 9.02(i), including adequate protection Liens granted pursuant to the DIP Orders, which Liens, in each case, shall rank the same priorities as set forth in the DIP Orders;

(i) other Liens securing obligations arising in the ordinary course of business, other than Indebtedness for borrowed money, outstanding in an aggregate amount not to exceed [\$1,000,000];

(j) Liens in the form of cash collateral (withdrawn from the Letter of Credit Account pursuant to a Letter of Credit Withdrawal Notice) securing obligations owed to suppliers and vendors in an aggregate amount not to exceed the Alternate Cash Collateral Amount; *provided* that the Borrower shall use commercially reasonable efforts to ensure that such cash collateral will continue to secure the Secured Obligations (other than reimbursement obligations under Letters of Credit) on a junior basis under arrangements (including security documentation and cash management) that are acceptable to the DIP Agent and the Required Lenders (it being understood and agreed that in any event the Loan Parties' interests in such cash collateral, including the residual value of such cash collateral or the remaining interests of the Loan Parties therein will continue to constitute Collateral that secures the Secured Obligations); and

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(k) Liens outstanding as of the Effective Date that are disclosed to the Lenders in Schedule 9.03.

Section 9.04 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its stockholders or make any distribution of its Property to its Equity Interest holders, except Subsidiaries may declare and pay dividends to the Loan Parties.

Section 9.05 Investments, Loans and Advances. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding, or enter into any agreement to make, any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) Investments as of the Effective Date that are disclosed to the Lenders in Schedule 9.05;

(b) accounts receivable arising in the ordinary course of business consistent with past practice;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof rated in one of the two highest grades by S&P or Moody's;

(e) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing exclusively in Investments described in Section 9.05(c), Section 9.05(d) or Section 9.05(e);

(g) Investments (i) made by the Borrower in or to the Guarantors, and (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Borrower or any Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Subsidiaries; *provided* that the Borrower shall give the DIP Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this Section 9.05(h) exceeds \$[100,000];

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- (i) Investments constituting Indebtedness permitted under Section 9.02;
- (j) credit provided to new or existing customers of the Loan Parties for the costs and expenses of extending service to such customers and for which such customers are contractually obligated to reimburse the Loan Party providing such credit in the ordinary course of business;
- (k) Investments in Hedging Agreements permitted by Section 9.17;
- (l) Investments consisting of the [licensing or contribution] of Intellectual Property in the ordinary course of business; and
- (m) other Investments not to exceed [\$] in the aggregate at any time.

Section 9.06 Nature of Business: International Operations. The Borrower will not, and will not permit any Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Petition Date. From and after the date hereof, the Borrower and its Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any real Property not located within the geographical boundaries of the United States.

Section 9.07 Proceeds of Loans. The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 8.21. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board, in each case as now in effect or as the same may hereinafter be in effect.

Section 9.08 ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time:

- (a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code;
- (b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto;
- (c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that contributions to or the obligation to contribute to may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3)

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of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code; and

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to the Borrower or a Subsidiary or with respect to any ERISA Affiliate of the Borrower or a Subsidiary if such Person sponsors, maintains or contributes to, or at any time in the six year period preceding such acquisition has sponsored, maintained, or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, (i) that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA or (ii) that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such plan allocable to such benefit liabilities.

Section 9.09 Sale or Discount of Receivables. Except (a) sales otherwise permitted pursuant to Section 9.11 and (b) for receivables obtained by the Borrower or any Subsidiary from the settlement of joint interest billing accounts in the ordinary course of business or discounts granted to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. The Borrower will not, and will not permit any Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a “consolidation”), or liquidate or dissolve, except (a) with the consent of the DIP Agent or the Required Lenders, or (b) that the Borrower or any Subsidiary may sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person pursuant to one or more Qualified APAs, the proceeds of which are remitted to the DIP Agent concurrently with the consummation of such disposition in an amount necessary to repay all of the Secured Obligations concurrently with the consummation of such disposition, and which results in the Payment in Full of all of the Secured Obligations.

Section 9.11 Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property except for:

- (a) dispositions of cash and Cash Equivalents in the ordinary course of business and in connection with transactions permitted by this Agreement;
- (b) the sale of inventory in the ordinary course of business;
- (c) the sale or transfer of obsolete or worn out property and property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registration or application for registration of any Intellectual Property

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that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned or be invalidated), whether now owned or hereafter acquired, in the ordinary course of business or is replaced by replacement property of at least comparable value and use;

(d) Restricted Payments permitted by Section 9.04 and Liens permitted by Section 9.03;

(e) the transfer of Property to another Loan Party;

(f) the transfer of Property occurring in connection with a transaction permitted by, and made in compliance with, the provisions of Section 9.10;

(g) dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business to the extent permitted under Section 9.09;

(h) grants of Leases, subleases, licenses or sublicenses (including the provision of software under an open source license), easements, rights of way or similar rights or encumbrances in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries; and

(i) transfers of Property that has suffered a Casualty Event upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) other Asset Sales of the Properties listed on Schedule 9.11 for fair market value; *provided* that such Asset Sale shall have been approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order in form and substance satisfactory to the Required Lenders and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii); and

(k) other Asset Sales pursuant to a *de minimis* asset sales procedures order that is an Approved Bankruptcy Court Order; *provided* that the Net Sale Proceeds thereof in excess of [\$] in the aggregate for all such Asset Sales shall be applied in accordance with Section 3.04(b)(ii).

Section 9.12 Environmental Matters. With respect to the Properties and any operations thereat or associated therewith, the Borrower will not, and will not permit any Subsidiary to, be in violation of Environmental Law, have any Release or threatened Release of Hazardous Materials other than those that are in compliance with Environmental Law, allow any exposure to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation, or be required under Environmental Law to perform any Remedial Work.

Section 9.13 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor), except (a) Restricted Payments permitted by Section 9.04, (b) Investments permitted by Section 9.05, and (c) transactions that are otherwise permitted under

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this Agreement and the Approved Bankruptcy Court Orders, and are upon fair and reasonable terms no less favorable to it, when taken as a whole, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 9.14 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary. The Borrower shall not, and shall not permit any Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 9.11(f), Section 9.11(g) or Section 9.15. Neither the Borrower nor any Subsidiary shall have any Foreign Subsidiaries or any Subsidiaries that are not Wholly-Owned Subsidiaries.

Section 9.15 Limitation on Issuance of Equity Interests. The Borrower shall not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for Equity Interests issued to another Loan Party. The Borrower and the Subsidiaries shall comply with Section 8.12 with respect to any such issued Equity Interests.

Section 9.16 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any material agreement or arrangement (other than (a) the Loan Documents, (b) the loan documents for the Prepetition Facilities (c) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (d) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (e) documents creating Liens which are described in clauses (g) or (h) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h)), (f) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any subsidiary pending the consummation of such sale, (g) [reserved], (h) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (i) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the DIP Agent and the Lenders, or that requires the consent of or notice to other Persons in connection therewith, or that restricts any Subsidiary from paying dividends or making distributions to, making Investments in, or transferring any of its Property to the Borrower or any Guarantor, or that requires the consent of or notice to other Persons in connection therewith.

Section 9.17 Hedging Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Hedging Agreements with any Person other than Hedging Agreements in respect of commodities or interest rates (i) with an Approved Counterparty and (ii) that are entered into for the purpose of hedging exposure to interest rates or commodity prices and that are not for speculative purposes. In no event shall any Hedging Agreement contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post

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collateral or margin to secure their obligations under such Hedging Agreement or to cover market exposures, other than Letters of Credit (and the proceeds thereof) the face amounts of which do not exceed \$[5,000,000] in the aggregate at any time.

Section 9.18 Holding Company. The Borrower will remain a holding company and will not own any real property, immovable property, or other assets of material value other than Equity Interests in Subsidiaries, furniture, furnishings and equipment acquired and maintained in the ordinary course of business, Investments to the extent permitted hereunder, assets acquired that are promptly, and in any event within 30 days of acquisition by the Borrower, transferred, contributed or otherwise assigned by the Borrower to one or more of the other Loan Parties, and interests in contracts customarily entered into by the Borrower in the ordinary course of its business.

Section 9.19 Sale and Leaseback. The Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.20 Amendments to Organization Documents, Material Contracts, Fiscal Year End; Prepayments of other Indebtedness.

(a) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organization Documents.

(b) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) any Material Contract in a manner that would be adverse to the Lenders in any material respect.

(c) The Borrower shall not, and shall not permit any Subsidiary to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

(d) The Borrower shall not, and shall not permit any Subsidiary to, make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any outstanding prepetition Indebtedness, except as otherwise permitted by this Agreement, the DIP Orders or any Approved Bankruptcy Court Order.

Section 9.21 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 7.26, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law,

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or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to any Lender any certification or other evidence requested from time to time by such Lender confirming the Borrower's and the Subsidiaries' compliance with this Section 9.21(a)).

(b) The Borrower shall not, and shall not permit any Subsidiary to, cause or permit any of the funds of the Borrower or any Subsidiary that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Governmental Requirement.

Section 9.22 Embargoed Person. The Borrower shall not, and shall not permit any Subsidiary to, permit (a) any of the funds or Properties of the Borrower or any Subsidiary that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or Governmental Requirement promulgated thereunder, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement, or the Loans would be in violation of a Governmental Requirement, or (ii) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower or any Subsidiary, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement or the Loans are in violation of a Governmental Requirement.

Section 9.23 Deposit Accounts, Securities Accounts and Commodity Accounts. Subject to Section 8.20, the Borrower will not, and will not permit any Subsidiary to, deposit any funds, securities or commodities in any Deposit Account (other than payroll Deposit Accounts consistent with current practice and Deposit Accounts used solely for any healthcare program), Securities Account or Commodity Account (each, as defined in the Uniform Commercial Code, as it may be amended, from time to time in effect in the State of New York), as applicable, unless such account is subject to a valid Lien in favor of the DIP Agent for the benefit of the Secured Parties and a control agreement in form and substance satisfactory to the Required Lenders.

Section 9.24 Southcross Holdings Receivables. The Borrower will not, and will not permit any Subsidiary to, permit any account receivable owing from Southcross Holdings to the Borrower to be more than 30 days past its due date.

Section 9.25 Additional Bankruptcy Matters. Without the Required Lenders' prior written consent, the Borrower will not, and will not permit any Subsidiary to, do any of the following:

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(a) assert or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such) or the Prepetition Secured Parties, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Lenders;

(b) subject to the terms of the DIP Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the DIP Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default (provided that any Loan Party may contest or dispute whether an Event of Default has occurred); or

(c) except as expressly provided or permitted hereunder (including, without limitation, to the extent expressly identified in any line item in the Approved Budget) or, with the prior consent of the Required Lenders, as provided pursuant to any other Approved Bankruptcy Court Order, make any payment or distribution to any Affiliate that is not a Loan Party or to any insider of the Borrower outside of the ordinary course of business; and

(d) notwithstanding anything to the contrary in this Agreement, the DIP Orders or any of the other Loan Documents, propose, adopt, support, consummate or effect any Chapter 11 Plan, plan of liquidation, sale, structured dismissal or any other resolution of the Cases, unless such case resolution provides for the Payment in Full in cash on the effective date thereof of the Secured Obligations (including any Loans held by the Lenders).

Section 9.26 Other Superpriority Claims. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the DIP Agent and the Lenders against the Loan Parties hereunder, except for the Carve-Out or as otherwise provided in the DIP Orders.

ARTICLE X EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. One or more of the following events shall constitute an “**Event of Default**”:

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

(b) The Borrower shall fail to pay any interest on any Loan or fee or other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party, any Subsidiary of the Borrower or Holdings in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or

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waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) The Borrower or any Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 8.01(j), Section 8.02, Section 8.03, Section 8.07, Section 8.20, Section 8.23, Section 8.24 or in Article IX or (ii) 8.01(q) and such failure in respect of this clause (ii) shall continue unremedied for two (2) Business Days.

(e) Any Loan Party or any Subsidiary of the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of fifteen (15) days after the earlier to occur of (i) notice thereof from the DIP Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer, or a Responsible Officer of such Subsidiary, otherwise becoming aware of such default.

(f) The Borrower or any Subsidiary shall fail to make any payment of principal of or interest on any postpetition Material Indebtedness, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace.

(g) Except with respect to obligations that are unenforceable as a result of the commencement of the Chapter 11 Cases and defaults that occur solely as a result of the filing of the Chapter 11 Cases, any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Subsidiary to make an offer in respect thereof.

(h) The LC Cash Collateralization Amount, at any time, exceeds the Letter of Credit Deposit Amount.

(i) [Reserved]

(j) The Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) (i) One or more postpetition judgments for the payment of money in an aggregate amount in excess of \$1,000,000 or (ii) any one or more non-monetary postpetition judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the Borrower, any Subsidiary or any combination thereof and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

(l) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding

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and enforceable in accordance with their terms against any Loan Party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or any Loan Party or any of their Affiliates shall so state in writing.

(m) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when together with all other ERISA Events that have occurred, could reasonably be expected to result in the liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000 in the aggregate.

(n) A Change in Control shall occur.

(o) (i) Any Debtor shall fail to comply with any of the provisions of the DIP Orders, any order related to the Credit Facility, cash management or bank accounts, or any Chapter 11 Plan, or any other Bankruptcy Court order that affects or may reasonably be expected to affect any of the rights, remedies, powers, privileges, claims or Liens of the DIP Agent or any other Secured Party;

(ii) unless otherwise approved by the DIP Agent or the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to any Chapter 11 Case, and such order shall not be reversed or vacated;

(iv) a trustee, examiner or other responsible officer shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(v) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or the filing by a Debtor of a motion seeking any such relief, or the failure of a Debtor to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the Bankruptcy Court;

(vii) the Bankruptcy Court shall enter an order terminating the exclusive right of any Debtor to file a Chapter 11 Plan;

(ix) any or all Loan Parties shall enter into an agreement for, or any Debtor shall file (or support or fail to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the respective court) a motion seeking, or the Bankruptcy Court shall enter, an order authorizing, a sale of all or substantially all of such Loan Party's assets for a cash price or other terms that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless the terms are otherwise acceptable to the Required Lenders;

(x) any Debtor shall file a motion seeking authority to consummate a sale of assets of such Debtor or any of its Subsidiaries (other than any such sale of assets that is permitted by the Loan Documents) outside the ordinary course of business, or any sale of any part of the Collateral pursuant to Section 363 of the Bankruptcy Code, in each case, that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless such sale is otherwise permitted under Section 9.11 or is otherwise acceptable to the Required Lenders;

(xi) without the prior written consent of the DIP Agent or the Required Lenders, any Debtor shall file a motion to alter, amend, vacate, supplement, or modify, in any respect, either of the DIP Orders or either of the DIP Orders is reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, *provided* that entry of the Final DIP Order shall not be deemed to reverse, modify, amend, stay or vacate the Interim DIP Order for purposes of this clause (xii);

(xii) the Bankruptcy Court shall enter an order granting any Person, other than the DIP Agent, relief from the automatic stay under the Cases, in either case, to permit enforcement on, foreclosure on or repossession of any Collateral or other assets of any Loan Party if such relief could reasonably be expected to have a Material Adverse Effect, or to permit the commencement or continuation of prepetition litigation against any Debtor for any purpose other than to liquidate the amount of a disputed claim involving potential liability not covered by insurance, which litigation could reasonably be expected to result in net liabilities in excess of \$250,000 or otherwise have a Material Adverse Effect;

(xiii) an order shall be entered for the substantive consolidation of the Estate of any Debtor with any other Person, unless such Person is another Debtor, and such order granting substantive consolidation provides that the assets of such Debtor shall remain subject to the Liens of the DIP Agent and Prepetition Agents securing the Secured Obligations and the Prepetition Obligations, respectively;

(xiv) any Debtor shall contest the validity or enforceability of the Credit Facility, any Debtor shall deny in writing that such Debtor has any further liability or obligation under the Credit Facility, or the DIP Agent or Secured Parties shall cease to have the benefit of the Liens granted by any of the DIP Orders once such orders have been made;

(xv) an order shall be entered by the Bankruptcy Court avoiding or requiring disgorgement by the DIP Agent or any other Secured Party of any amounts received in respect of the Secured Obligations or Prepetition Obligations;

(xvi) a Debtor shall file any motion or other request with the Bankruptcy Court seeking authority to use any cash proceeds of the DIP Collateral or the Prepetition Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code or other applicable law secured by a Lien upon any Collateral, in each case without the DIP Agent's prior written consent unless motion

contemplates the Payment in Full of the Secured Obligations immediately upon the consummation of the transactions contemplated thereby;

(xvii) except as permitted in the DIP Orders, the Bankruptcy Court enters any order in any of the Chapter 11 Cases granting to any Person a Superpriority Claim or Lien *pari passu* with or senior to that granted to the DIP Agent under the DIP Orders;

(xviii) any Loan Party shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of the DIP Agent securing the Secured Obligations or any Liens of any Prepetition Agent securing the Prepetition Obligations, or the validity or enforceability of any of the Loan Documents or Prepetition Loan Documents, or asserting any Avoidance Claim against any of the Prepetition Secured Parties, or seeking to recover any monetary damages from the DIP Agent, any Lender, any of the Prepetition Secured Parties;

(xix) a Challenge (as defined in the DIP Orders) shall be filed by any party in interest and shall be sustained by the Bankruptcy Court, in whole or in part; or

(xx) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; *provided* that the Loan Parties hereby agree that the DIP Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the DIP Agent is authorized to represent to the Bankruptcy Court that the Loan Parties have consented to such expedited hearing on the motion);

(p) Any Case Milestone shall have not been met;

(q) Any Loan Party seeks to obtain Bankruptcy Court approval of a disclosure statement or Chapter 11 Plan other than a disclosure statement relating to, or a plan that is, an Acceptable Plan, or any of the Loan Parties or affiliates file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(r) Entry of an order approving a Section 363 Sale unless such order contemplates the Payment in Full of the DIP Facility upon consummation of such sale or such terms are otherwise acceptable to the Required Lenders; or

(s) The Interim DIP Order or Final DIP Order, as applicable, ceases to create a valid and perfected security interest and lien on the DIP Collateral.

Section 10.02 Remedies.

(a) Subject to the terms of the DIP Orders, in the case of an Event of Default, at any time thereafter during the continuance of such Event of Default, the DIP Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon

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the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Loan Documents shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the DIP Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied, subject to the DIP Order (including the Remedies Notice Period (as defined therein)), the Carve-Out and, if applicable, the Wind-Down Budget:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the DIP Agent in its capacity as such;

(ii) *second, pro rata* to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) *third, pro rata* to payment of accrued interest on the Loans;

(iv) *fourth, pro rata* to payment of (A) principal outstanding on the DIP Term Loans, (B) Secured Obligations referred to in clause (c) of the definition of Secured Obligations owing to a Bank Products Provider, and (C) any other Secured Obligations (other than Roll-Up Loans);

(v) *fifth, pro rata* to payment of any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis;

(vi) *sixth*, to repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); and

(vii) *seventh*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

Notwithstanding the foregoing, Bank Products shall be excluded from the application described above if the DIP Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products

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Provider Each Bank Products Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the DIP Agent pursuant to the terms of Article XI for itself and its Affiliates as if a “Lender” party hereto.

ARTICLE XI THE DIP AGENT

Section 11.01 Appointment and Authority. Each of the Lenders and each Issuing Bank hereby irrevocably appoints Wilmington Trust, National Association, to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the DIP Agent, the Lenders and each Issuing Bank, and neither the Borrower nor any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the DIP Agent is hereby expressly authorized to (a) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Instruments and (b) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

Section 11.02

Section 11.03 Rights as a Lender. The Person serving as the DIP Agent hereunder shall, if applicable, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the DIP Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.04 Exculpatory Provisions.

(a) The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the DIP Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (it being understood that the term “agent” used herein and in the other Loan Documents with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine or any other applicable law; rather, 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);

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the DIP Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02 or 12.02); *provided* that the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the DIP Agent to liability, if the DIP Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable law including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The DIP Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.02 and Section 10.02) or (ii) otherwise hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The DIP Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the DIP Agent by the Borrower, a Lender or an Issuing Bank.

(c) The DIP Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,

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effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the DIP Agent or as to those conditions precedent expressly required to be to the DIP Agent's satisfaction, (vi) the existence, value, perfection, or priority of any collateral security or the financial or other condition of the Loan Parties and the Subsidiaries or any other obligor or guarantor, or (vii) any failure by any Loan Party or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements, or other terms or conditions set forth herein or therein.

Section 11.05 Reliance by DIP Agent. The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the DIP Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the DIP Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.06 Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XI and Section 12.03(b) and (c) shall apply to any such sub agent and to the Related Parties of the DIP Agent and any such sub agent, and shall apply to their respective as DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.07 Resignation of DIP Agent. The DIP Agent may at any time give notice of its resignation to the Lenders, each Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a bank as a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring DIP Agent gives notice of its resignation, then the retiring DIP Agent may on behalf of the Lenders and each Issuing Bank, appoint a successor DIP Agent meeting the qualifications set forth above, *provided* that if no such successor DIP Agent has been appointed by the 30th day after the resigning DIP Agent gave notice of its resignation, the retiring DIP Agent's resignation

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shall nevertheless thereupon become effective in accordance with such notice and (a) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the DIP Agent on behalf of the Lenders or any Issuing Bank under any of the Loan Documents, the retiring DIP Agent shall continue to hold such collateral security until such time as a successor DIP Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor DIP Agent as provided for above in this Section 11.06. Upon the acceptance of a successor's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring DIP Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

Section 11.08 Non-Reliance on DIP Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents, or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties or the Subsidiaries. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the DIP Agent hereunder, the DIP Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of the Loan Parties (or any of their Affiliates) which may come into possession of the DIP Agent or any of its Affiliates. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.09 [Reserved.]

Section 11.10 Authority of DIP Agent to Release Collateral and Liens. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to release (a) any Collateral that is permitted to be sold or released pursuant to the terms of the Loan

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Documents, and (b) any Mortgaged Property that does not constitute Material Real Property if any Building (as defined in the applicable Flood Insurance Law) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Law) is situated on such Mortgaged Property and the DIP Agent, in its sole discretion, determines that the costs, financial and otherwise, of obtaining or maintaining a Lien or complying with all Governmental Requirements with respect to such Lien outweigh the benefit to the Secured Parties of the security afforded thereby. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to execute and deliver to the Borrower (or file, if appropriate), at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents. To the extent any Property is sold, assigned, conveyed or otherwise transferred as expressly permitted by Section 9.11 to any Person other than a Loan Party, such Collateral shall be sold, assigned, conveyed or otherwise transferred free and clear of all Liens created by the Loan Documents.

Section 11.11 Action by the DIP Agent. The DIP Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as provided in Section 10.02 or Section 12.02) and in all cases the DIP Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders, the Lenders or the Issuing Banks, as applicable, (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders or Issuing Banks, as applicable, against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the DIP Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the DIP Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section, *provided* that, unless and until the DIP Agent shall have received such directions, the DIP Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the DIP Agent be required to take any action which exposes the DIP Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law.

Section 11.12 Certain Secured Parties. No Bank Products Provider that obtains the benefit of Section 10.02(c) or any Collateral by virtue of the provisions hereof or any Security Instrument or DIP Order 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, any DIP Order or of any

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Security Instrument) 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 XI to the contrary, the DIP Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products except to the extent expressly provided herein and unless the DIP Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products Provider. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products in the case of a Maturity Date.

ARTICLE XII MISCELLANEOUS

Section 12.01 Notices.

(a) Notices Generally. Subject to Section 12.01(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at the following:

Southcross Energy Partners, L.P.
1717 Main Street, Suite 5300
Dallas, TX 75201
Attn: Michael B. Howe
Fax: (214) 979-3710
Email: michael.howe@southcrossenergy.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Ave
New York, NY 10017
Attn: Jinsoo H. Kim
Fax: (212) 701-5217
Email: jinsoo.kim@davispolk.com

(ii) if to the DIP Agent, to it at the following:

Wilmington Trust, National Association.
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Nikki Kroll
Fax: (612) 217-5651
Email: nkroll@wilmingtontrust.com

with copies to (which shall not constitute notice):

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Arnold & Porter Kaye Scholer LLP
 250 West 55th Street
 New York, NY 1001909710
 Attn: Alan Glantz
 Fax: (212) 836-6763
 Email: alan.glantz@arnoldporter.com

and

Willkie Farr & Gallagher LLP
 787 Seventh Avenue
 New York, NY 10019
 Attn: Leonard Klingbaum
 Fax: (212) 728-9290
 Email: LKlingbaum@willkie.com

(iii) if to Wells Fargo, as Issuing Bank, to it at the following:

[]

(iv) if to RBC, as Issuing Bank, to it at the following:

[]

(v) if to UBS AG, as Issuing Bank, to it at the following:

[]

(vi) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.01(b) below, shall be effective as provided in Section 12.01(b).

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the DIP Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II, Article III, Article IV and Article V if such Lender or such Issuing Bank, as applicable, has notified the DIP Agent that it is incapable of receiving notices under such Article(s) by electronic communication. The DIP Agent or the Borrower may, in its discretion,

agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the DIP Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (B) of notification that such notice or communication is available and identifying the website address therefore.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the DIP Agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the DIP Agent, any Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the DIP Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and acknowledged by the DIP Agent, or by the Borrower and the DIP Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan

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or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender adversely affected thereby, *provided, however*, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) [reserved], (iii) except as provided in the definition of “Scheduled Maturity Date”, postpone the scheduled date of payment or prepayment of the principal amount of any Loan (excluding mandatory prepayments), or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date or Maturity Date without the written consent of each Lender adversely affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) or Section 12.14 or change the definition of the terms “Domestic Subsidiary”, “Foreign Subsidiary” or “Subsidiary”, without the written consent of each Lender (other than any Defaulting Lender), (vi) release any Guarantor (except as permitted pursuant to the Guaranty and Collateral Agreement or in connection with a sale of such Guarantor permitted under Section 9.11) or release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (vii) change any of the provisions of this Section 12.02(b), Section 10.02(c), or the definitions of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender other than any Defaulting Lender, (viii) change the application of prepayments under Section 3.04(c), without the written consent of the Required Lenders (it being understood that the Required Lenders may waive, in whole or in part, any prepayment so long as the application of any such prepayment that is still required to be made is not changed), or (ix) modify Section 2.07 (or any definitions related thereto) in any manner that is adverse to the Issuing Banks that have Letters of Credit outstanding without the consent of each such Issuing Bank; *provided, further*, that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the DIP Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the DIP Agent or any Issuing Bank, as the case may be, and (y) the Agency Fee Letter may be amended, or rights or privileged thereunder waived in a writing executed only by the parties thereto (without the need for the consent of any other party thereto). Notwithstanding the foregoing, (x) any supplement to Schedule 7.14 (Subsidiaries) shall be effective simply by delivering to the DIP Agent a supplemental schedule clearly marked as such and, upon receipt, the DIP Agent will promptly deliver a copy thereof to the Lenders, (y) the Borrower (or other applicable Loan Party) and the DIP Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document if the same is not objected to in writing by Lenders constituting the Required Lenders within 5 Business Days after the DIP Agent delivers written notice thereof to the Lenders, and (z) the DIP Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become

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Mortgaged Property to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 12.03 Expenses, Indemnity; Damage Waiver.

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the DIP Agent and its Affiliates and by the Lenders (including the reasonable fees, charges and disbursements of counsel and other outside consultants for the DIP Agent and the Lenders) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the DIP Agent as to the rights and duties of the DIP Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), (ii) all costs, expenses, Taxes, assessments and other charges incurred by the DIP Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), and (iv) all out-of-pocket expenses incurred by the DIP Agent, any Issuing Bank or any Lender (including the fees, charges and disbursements of any counsel for the DIP Agent, any Issuing Bank or any Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.03 or in connection with the Loans made or Letters of Credit issued hereunder, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, as counsel for the Issuing Banks, and local counsel in each material jurisdiction). Notwithstanding anything to the contrary contained in this Section 12.03(a) or elsewhere in any of the Loan Documents, neither the Borrower nor any Subsidiary shall be obligated to pay or reimburse any Person for any costs, expenses, fees, taxes or other charges of any nature whatsoever that are incurred or payable by any Person in connection with any assignment referred to in Section 12.04(b), any participation referred to in Section 12.04(d) or any pledge or security interest referred to in Section 12.04(f).

(b) **INDEMNIFICATION BY THE BORROWER.** THE BORROWER SHALL INDEMNIFY EACH AGENT (AND ANY SUB-AGENT THEREOF), ANY ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE

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FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN “**INDEMNITEE**”) AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE (LIMITED, IN THE CASE OF LEGAL FEES, DISBURSEMENTS AND CHARGES, TO THE REASONABLE AND DOCUMENTED FEES, DISBURSEMENTS AND OTHER CHARGES OF ARNOLD & PORTER LLP, AS COUNSEL TO THE DIP AGENT, WILLKIE FARR & GALLAGHER LLP, AS COUNSEL FOR THE LENDERS, VINSON & ELKINS LLP, AS COUNSEL FOR THE ISSUING BANKS, AND LOCAL COUNSEL IN EACH MATERIAL JURISDICTION), INCURRED BY ANY INDEMNITEE OR ASSERTED AGAINST ANY INDEMNITEE BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (ii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING, WITHOUT LIMITATION, (A) ANY REFUSAL BY ANY ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (vii) ANY ASSERTION THAT THE SECURED PARTIES WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY

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PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF ITS SUBSIDIARIES, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (x) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, (y) OTHER THAN IN THE CASE OF THE DIP AGENT AND ITS RELATED PARTIES, RESULT FROM A CLAIM BROUGHT BY THE BORROWER OR ANY SUBSIDIARY AGAINST ANY INDEMNITEE FOR BREACH IN BAD FAITH OF SUCH INDEMNITEE'S OBLIGATIONS HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, IF THE BORROWER OR SUCH SUBSIDIARY HAS OBTAINED A FINAL AND NONAPPEALABLE JUDGMENT IN ITS FAVOR ON SUCH CLAIM AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR (z) RESULT FROM ANY DISPUTE SOLELY AMONG INDEMNITEES, OTHER THAN ANY CLAIMS AGAINST ANY INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN AGENT, OR ANY SIMILAR ROLE UNDER THIS AGREEMENT, AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION ON THE PART OF THE BORROWER OR ANY OF ITS SUBSIDIARIES OR AFFILIATES.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay indefeasibly any amount required under Sections 12.03(a) or (b) to be paid by it to the DIP Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought (or, if such indemnity or reimbursement is sought after the date upon which the Loans

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shall have been paid in full and the Commitments have been terminated, in accordance with such Lenders' Applicable Share as in effect immediately prior to such date))) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the DIP Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any source against any amount due to the DIP Agent under this paragraph (c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof (other than to the extent any such damages are asserted pursuant to a third-party claim that would otherwise be required to be indemnified or reimbursed pursuant to any Loan Document). No Indemnitee referred to in Section 12.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the Transactions.

(e) Payments. All amounts due under this Section 12.03 shall be payable promptly after written demand therefor.

Section 12.04 Assignments and Participations.

(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 (including any Affiliate of any Issuing Bank that issues a Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the DIP Agent and each Lender, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of Section 12.04(b), (B) by way of participation in accordance with the provisions of Section 12.04(d), or (C) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.04(f) (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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(d)) and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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(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 assignments 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, no minimum amount need be assigned; and

(B) in any case not described in Section 12.04(b)(i)(A), 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 DIP Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the DIP Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement and 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 on a non- *pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 12.04(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the DIP Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the DIP Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Commitment or Credit Exposure if such assignment is to a

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Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which may be waived or reduced in the sole discretion of the DIP Agent), and the assignee, if it is not a Lender, shall deliver to the DIP Agent an Administrative Questionnaire and any tax forms required under Section 5.03.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower, any Sponsor, or any of the Borrower's or any Sponsor's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) No Assignments to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender.

Subject to acceptance and recording thereof by the DIP Agent pursuant to Section 12.04(c), 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 Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(d).

(c) Register. The DIP Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon the DIP Agent's receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the DIP Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(c). The entries in the Register shall be conclusive, and the Borrower, the DIP Agent, any

Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any Issuing Bank, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, any Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent

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manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the DIP Agent (in its capacity as DIP Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.03(f) as though it were a Lender

(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, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and Section 12.04(e) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Restrictions if Registration Required. Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the DIP Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

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(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the DIP Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the DIP Agent or the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the DIP Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Effectiveness. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the DIP Agent and when the DIP Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof;

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and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Hedging Agreements, and in whatever currency) at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower or any Subsidiary against any and all of the obligations of the Borrower or any Subsidiary now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Subsidiary may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the DIP Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND, EXCEPT AS OTHERWISE SET FORTH THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL, EXCEPT AS OTHERWISE SET FORTH THEREIN, BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE COUNTY AND STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR

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PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO OTHER PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR ATTORNEY FOR ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the DIP Agent, any Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors (including accountants and legal counsel) and other 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), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or

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any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to any other party to this Agreement, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the DIP Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section 12.11, “**Information**” means all information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary relating to any Sponsor, Southcross Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the DIP Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by any Sponsor, Southcross Holdings, the Borrower or a Subsidiary; *provided* that, in the case of information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law

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applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

Section 12.13 Exculpation Provisions. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 [Reserved].

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialman) shall have any rights, claims, remedies or

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privileges hereunder or under any other Loan Document against the DIP Agent, any Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.16 USA Patriot Act Notice. The DIP Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**USA Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow the DIP Agent and such Lender to identify the Borrower and its Subsidiaries in accordance with the USA Patriot Act.

Section 12.17 [Reserved].

Section 12.18 Non-Recourse to the General Partner. This Agreement and the other Loan Documents do not and will not in any way constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary hereunder or thereunder. If any provision of this Agreement or any other Loan Document is held by any authority to constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary, such provision shall be deemed ineffective to the extent such provision constitutes a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary. Neither this Agreement nor any Loan Document is intended to create any liability of the General Partner for the performance of any obligation of the Borrower or any Subsidiary thereunder or hereunder. NEITHER THE DIP AGENT NOR ANY LENDER SHALL HAVE ANY RECOURSE AGAINST THE GENERAL PARTNER (INCLUDING ANY RECOURSE FOR ANY DEFICIENCY REMAINING UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT AFTER THE DISPOSITION OF COLLATERAL PLEDGED BY THE BORROWER OR ANY SUBSIDIARY AND THE DISPOSITION OF THE GP COLLATERAL PLEDGED BY THE GENERAL PARTNER); *PROVIDED*, THAT, NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN NO EVENT SHALL THIS SECTION 12.18 RELIEVE THE GENERAL PARTNER FROM ANY LIABILITY IT MAY HAVE AS A RESULT OF ITS FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR THAT OF ANY OF ITS OFFICERS, IN CONNECTION WITH THE EXECUTION, DELIVERY OR PERFORMANCE OF ANY LOAN DOCUMENTS OR ANY CERTIFICATES OR DOCUMENTS DELIVERED IN CONNECTION THEREWITH BY THE GENERAL PARTNER ON BEHALF OF THE BORROWER IN ITS CAPACITY AS THE BORROWER’S GENERAL PARTNER.

Section 12.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the DIP Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the DIP Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the DIP Agent and the Lenders are arm’s-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the

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DIP Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the DIP Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) neither the DIP Agent or the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the DIP Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and neither the DIP Agent nor any of the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the DIP Agent and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.20 [Reserved].

Section 12.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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[SIGNATURES BEGIN NEXT PAGE]

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The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

**SOUTHCROSS ENERGY PARTNERS,
L.P.**

By: Southcross Energy Partners GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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Each of the undersigned (i) consents and agrees to this Agreement, and (ii) agrees that the Loan Documents to which it is a party (including, without limitation, the Debtor-in-Possession Guaranty and Collateral Agreement dated as of [●], as applicable) shall remain in full force and effect and shall continue to be the legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

CONSENTED, ACKNOWLEDGED AND
AGREED TO BY:

**SOUTHCROSS ENERGY OPERATING, LLC
SOUTHCROSS ENERGY LP LLC
SOUTHCROSS ENERGY GP LLC
SOUTHCROSS DELTA PIPELINE LLC
SOUTHCROSS PROCESSING LLC
SOUTHCROSS ALABAMA PIPELINE LLC
SOUTHCROSS NUECES PIPELINES LLC
SOUTHCROSS ENERGY FINANCE CORP.
FL RICH GAS SERVICES GP, LLC
T2 EF COGENERATION HOLDINGS, LLC
T2 EF COGENERATION LLC**

By: _____
Name:
Title

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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**SOUTHCROSS CCNG GATHERING LTD.
SOUTHCROSS CCNG TRANSMISSION LTD.
SOUTHCROSS GULF COAST
TRANSMISSION LTD.
SOUTHCROSS MISSISSIPPI PIPELINE, L.P.
SOUTHCROSS MISSISSIPPI GATHERING,
L.P.
SOUTHCROSS ALABAMA GATHERING
SYSTEM, L.P.
SOUTHCROSS MIDSTREAM SERVICES, L.P.
SOUTHCROSS MARKETING COMPANY
LTD.
SOUTHCROSS NGL PIPELINE LTD.
SOUTHCROSS GATHERING LTD.
SOUTHCROSS MISSISSIPPI INDUSTRIAL
GAS SALES, L.P.**

By: Southcross Energy GP LLC,
as general partner

By: _____
Name:
Title:

FL RICH GAS SERVICES, LP

By: FL Rich Gas Services GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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FL RICH GAS UTILITY GP, LLC

By:_____

Name:

Title:

**FL RICH GAS UTILITY, LP
SOUTHCROSS TRANSMISSION, LP**

By: FL Rich Gas Utility GP, LLC, its general
partner

By:_____

Name:

Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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DIP AGENT:

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as the DIP Agent

By: _____
Name: _____
Title: _____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ISSUING BANK:

[●], as an Issuing Bank

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

28770556.17

LENDER:

[●], as a Lender

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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ANNEX I
LIST OF COMMITMENTS

| Name of Lender | DIP LC Commitment | Initial Term Commitment | Delayed Draw Term Commitment | Commitment |
|-----------------------|------------------------------|------------------------------------|---------------------------------------------|-------------------------|
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| | | | | |
| TOTAL | \$55,000,000.00 | \$30,000,000.00 | \$42,500,000.00 | \$127,500,000.00 |

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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ANNEX II
PREPETITION LETTERS OF CREDIT

| <u>Issuing Bank</u> | <u>Beneficiary</u> | <u>Applica nt</u> | <u>Amount</u> | <u>Issue Date</u> |
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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ANNEX III
PERMITTED VARIANCES

| Forecast Line Item | Testing Period | Permitted Variance |
|---------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Total Cash Receipts | First two-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash receipts not less than 85% of those shown on the Approved Budget for the applicable period |
| Total Cash Expenditures | First two-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash expenditures not to exceed 115% of those shown on the Approved Budget for the applicable period |

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ANNEX IV
INITIAL APPROVED BUDGET

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

SCHEDULE 8.20

Post-Closing Obligations

1. Insurance Endorsements. Within thirty (30) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall deliver to DIP Agent insurance certificates and endorsements for liability and property, that provide Wilmington Trust, National Association, and its successors and assigns, ATIMA, as DIP Agent for the Lenders, is additional insured or lender's loss payable, as applicable, in form and substance reasonably satisfactory to the DIP Representative and otherwise in compliance with Section 8.07 of the Credit Agreement.
2. Possessory Collateral. Within five (5) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall have delivered (a) any Pledged Securities, Instruments or Tangible Chattle Paper (as such terms are defined in the Guaranty and Collateral Agreement) existing as of the Effective Date and not otherwise delivered on the Effective Date and (b) any other Collateral existing as of the Effective Date that would have required to be delivered by the Guaranty and Collateral Agreement if such Collateral was acquired after the Effective Date and such Collateral is not otherwise delivered on the Effective Date.
3. Account Control Agreements. Within sixty (60) days of the Effective Date (or such later date as determined by Lender Representative in its reasonable discretion), the Loan Parties shall have entered into control agreements required by Section 9.23 of the Credit Agreement, in form and substance satisfactory to the DIP Agent.

Exhibit 1 to Exhibit A

Form of DIP Credit Agreement

**SENIOR SECURED SUPERPRIORITY PRIMING
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of

April [●], 2019

among

**Southcross Energy Partners, L.P.,
a Debtor and a Debtor-in-Possession, as Borrower,**

**Wilmington Trust, National Association,
as DIP Agent,**

and

The Lenders Party Hereto

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THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of April [•], 2019, is among: Southcross Energy Partners, L.P., a Delaware limited partnership and a debtor and debtor-in-possession (the “**Borrower**”); each of the Lenders from time to time party hereto; and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the “**DIP Agent**”);

RECITALS

A. The Borrower entered into that certain Term Loan Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Term Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Term Lenders**”) and Wilmington Trust, National Association, as successor administrative agent for the Prepetition Term Lenders (together with its successors in such capacity, the “**Prepetition Term Agent**”), pursuant to which the Prepetition Term Lenders extended to the Borrower term loans (“**Prepetition Term Loans**”) and made certain other financial accommodations to the Borrower and the other Loan Parties (as defined therein) pursuant to the terms thereof (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Term Loan Facility**”).

B. The Borrower entered into that certain Third Amended and Restated Revolving Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Revolving Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Revolving Lenders**”), the financial institutions acting as issuing banks for the Prepetition Letters of Credit (the “**Prepetition LC Issuers**”) and Wells Fargo Bank, N.A. as administrative agent for the Prepetition Revolving Lenders (together with its successors in such capacity, the “**Prepetition Revolving Agent**”), pursuant to which the Prepetition Revolving Lenders extended revolving loans to the Borrower (the “**Prepetition Revolving Loans**”), issued Prepetition Letters of Credit and made certain other extensions of credit to the Borrower (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Revolving Loan Facility**” and together with the Prepetition Term Loan Facility, the “**Prepetition Facilities**”).

C. On [•], 2019 (the “**Petition Date**”), the Loan Parties filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the “**Bankruptcy Court**”). The Loan Parties are continuing to operate their businesses and manage their properties as debtors and debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

E. Subject to the conditions precedent set forth herein, and the terms and conditions set forth herein, the Borrower has requested, and the Lenders and each Issuing Bank party hereto are willing to make available the credit facilities provided for herein for the purposes set forth herein. The parties hereto further agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS

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

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

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Acceptable Plan**” shall mean a Chapter 11 Plan that (i) provides for the termination of the unused commitments under the Credit Facility and the Payment in Full in cash of the Secured Obligations (and, as applicable, cash collateralization of any issued and undrawn Letters of Credit) upon the effective date of such plan, (ii) provides that the effective date of such plan shall occur by a date that is within the applicable Case Milestones, and (iii) contains customary releases and other exculpatory provisions for the DIP Agent, the DIP Lenders, the Prepetition Revolving Agent, the Prepetition Term Agent, and the Prepetition Lenders in form and substance reasonably satisfactory to the DIP Agent (at the direction of the Required Lenders), and the Prepetition Revolving Agent, and the Prepetition Term Agent.

“**Adjusted LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the LIBO Rate for such Interest Period *multiplied* by the Statutory Reserve Rate.

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

“**Affected Loans**” has the meaning assigned to such term in Section 5.05.

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

“**Agency Fee Letter**” means that certain Fee Letter, by and between the Borrower and the DIP Agent, dated as of the Effective Date, as may be amended, restated, supplemented or otherwise modified from time to time.

“**Agreement**” means this Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, as the same may from time to time be amended, modified, supplemented or restated.

“**Alternate Base Rate**” means, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.5% and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a

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Business Day, the immediately preceding Business Day) *plus* 1.0%. If the DIP Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the DIP Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternate Cash Collateral Amount” means up to the amount set forth on Schedule 1.02(a).

“Anti-Terrorism Law” has the meaning assigned to such term in Section 7.26(a).

“Applicable Margin” means (a) with respect to the DIP Term Loans, (i) for any ABR Borrowing thereof, 9.00%, and (ii) for any Eurodollar Borrowing thereof, 10.00% and (b) with respect to any Roll-Up Loans, 5.25%.

“Applicable Percentage” means, with respect to any Lender, the percentage of the aggregate Commitments represented by such Lender’s Commitment (or, if the Commitments have terminated or expired, the percentage of the aggregate Credit Exposures represented by such Lender’s Credit Exposure at such time); *provided* that in the case of Section 4.04 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the aggregate Commitments (disregarding any Defaulting Lender’s Commitments) represented by such Lender’s Commitment (or, if such Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments (and disregarding any Defaulting Lender’s unfunded Commitment based on the Commitments most recently in effect) at the time of determination).

“Approved Bankruptcy Court Order” means (a) the DIP Orders and the Cash Management Order, as each such order is in effect from time to time and (b) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral, (v) debtor-in-possession financing, or (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, or (viii) any transaction outside of the ordinary course of business with any Loan Party, that, in the case of each of the matters described under clauses (a) and (b), (x) is in form and substance satisfactory (or, solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to the Required Lenders in all respects, (y) once entered, has not been vacated, reversed or stayed and (z) has not been amended or modified except in a manner satisfactory (or,

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solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to, the Required Lenders.

“Approved Budget” means, as of the Effective Date, the Initial Approved Budget and, thereafter, any budget approved by the Required Lenders pursuant to Section 8.01(q).

“Approved Counterparty” means (a) any Lender or any Affiliate of a Lender and (b) any other Person whose (or whose credit support provider’s) long term senior unsecured debt rating is A-/A3 by S&P or Moody’s (or their equivalent) or higher.

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

“Asset Sale” means any sale, transfer, assignment, conveyance or other disposition by any Loan Party, or any of its Subsidiaries to any Person (including by way of redemption by such Person) of any Property (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person), but excluding (a) dispositions resulting from Casualty Events, and (b) sales and other dispositions of Property pursuant to Sections 9.11(a)-(e).

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

“Availability Period” means the period from and including the Effective Date to but excluding the Maturity Date.

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

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

“Bank Products” means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury or cash management services (including, without limitation, deposit accounts, funds transfers, automated clearinghouse services, auto-borrow services, zero balance accounts, returned check concentration, controlled disbursement services, lockboxes, account reconciliation and reporting service, trade finance services, overdraft protection, and interstate depository network services).

“Bank Products Provider” means any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any other Loan Party; provided, that such Lender or Affiliate must have delivered a Secured Party Designation Notice to the DIP Agent.

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

“Bankruptcy Court” shall have the meaning assigned to such term in the recitals of this Agreement.

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

“Bid Deadline” shall have the meaning assigned to such term in Section 8.24(g).

“Bid Procedures” shall have the meaning assigned to such term in Section 8.23(f).

“Bid Procedures and Sale Motion” shall have the meaning assigned to such term in Section 8.23(f).

“Bid Procedures Order” shall have the meaning assigned to such term in Section 8.23(f).

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

“Borrower Materials” has the meaning assigned to such term in Section 8.01.

“Borrower Notice” has the meaning assigned to such term in the definition of “Flood Zone Documentation”.

“Borrowing” means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Dallas, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means, in respect of any Person, for any period, the aggregate (determined without duplication) of all expenditures and costs that are capitalized on the balance sheet of such Person in accordance with GAAP, exclusive of, with respect to each Loan Party, expenditures and costs incurred by such Loan Party to the extent that an unaffiliated third Person has provided such Loan Party with funds to pay such expenditures and costs prior to incurrence.

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“Capital Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

“Carve-Out” has the meaning assigned to such term in the DIP Orders, as applicable; *provided, however*, that notwithstanding any other provision of the DIP Orders or the Loan Documents to the contrary, in no event shall the Carve-Out apply to amounts held in the Letter of Credit Account.

“Case Milestones” shall have the meaning assigned to such term in Section 8.23.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one year from the date of acquisition thereof, (b) commercial paper maturing no more than six months from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody’s, (c) certificates of deposit maturing no more than one year from the date of creation thereof issued by any Lender or commercial banks incorporated under the laws of the United States, having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

“Cash Management Order” has the meaning assigned to such term in Section 6.01(f).

“Casualty Event” means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Loan Parties or any of their Subsidiaries.

“Change in Control” means:

(a) the Sponsors and their Affiliates, collectively, shall cease to beneficially own and control, directly or indirectly, Equity Interests in the General Partner representing a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than the Sponsors and their respective Affiliates of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(c) the General Partner shall cease to be the sole general partner of the Borrower, with substantially the same (or more expansive) powers to manage the Borrower as are granted to the General Partner under the Organization Documents of the Borrower as of the Effective Date;

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(d) the Borrower shall cease to beneficially own and control, directly or indirectly, all of the Equity Interests in each of the other Loan Parties; or

(e) within any period of twelve (12) consecutive calendar months, individuals who were neither (i) members of the board of managers, or similar governing body, of the General Partner on the first day of such period, (ii) persons who were appointed or nominated by such persons, nor (iii) persons who were appointed or nominated by a Sponsor (or an Affiliate of a Sponsor) shall constitute a majority of the members of the board of managers, or similar governing body, of the General Partner.

For the avoidance of doubt, neither proposed entry into a “stalking horse” Qualified APA, entry into (but not consummation of the transactions pursuant to) a Qualified APA in accordance with the Bid Procedures Order nor the filing or proposal of (but not consummation of the transactions pursuant to) an Acceptable Plan shall constitute a Change in Control.

“**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; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Chapter 11 Cases**” shall have the meaning given to such term in the recitals to this Agreement.

“**Chapter 11 Plan**” means a plan of reorganization or liquidation filed in any of the Chapter 11 Cases under Section 1121 of the Bankruptcy Code.

“**Claim**” means all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term “Claim” shall include the items described in the definition of “Claim” in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under any other Bankruptcy Law, all claims or causes of action arising under the

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Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or Uniform Voidable Transactions Act as in effect in any state, and all rights of contribution, subrogation, exoneration or indemnity.

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

“Collateral” means any and all Property of the Loan Parties or any other Person that is secured by a Lien under one or more Security Instruments.

“Commitment” means, (a) with respect to each applicable Lender, the Term Commitment and/or the DIP LC Commitment of such Lender, as the context may require, and (b) with respect to all Lenders, the aggregate Term Commitments and/or the aggregate DIP LC Commitments of all Lenders, as the context may require.

“Commitment Letter” means that certain Commitment Letter, dated March [31], 2019, by and among the Borrower, certain funds or accounts managed by Solus Alternative Asset Management LP, and certain funds or accounts managed by Sound Point Capital Management, LP, as may be amended, restated, supplement and/or otherwise modified from time to time.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. 1, et seq.), as amended from time to time, any successor statute, and any rule, regulation, or order of the Commodities Futures Trading Commission (or the application or official interpretation of any thereof).

“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.

“Consolidated Subsidiaries” means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

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

“Credit Facility” means, individually and collectively as the context may require, the DIP Term Loan facility, Letter of Credit facility and Roll-Up Loan facility established under this Agreement.

“Debt Issuance” means any issuance by a Loan Party or its Subsidiaries of Indebtedness for borrowed money to any Person that is not a Loan Party.

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“Debt Issuance Proceeds” means with respect to any Debt Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Debt Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Debt Issuance.

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

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans within three (3) Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the DIP Agent, any Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend or expect to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after request by the DIP Agent or the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) otherwise failed to pay over to the DIP 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 the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or Person controlling such Lender or the exercise of control over a Lender or Person controlling such Lender by a Governmental Authority or an instrumentality thereof.

“Delayed Draw DIP Funding Date” shall mean any Business Day specified in a Notice of Borrowing delivered by the Borrower to the DIP Agent and on which the conditions set forth in Section 6.02 are satisfied or waived in accordance with the terms hereof and the Delayed Draw DIP Term Loans are made by the Lenders holding Delayed Draw Term Commitments pursuant to Section 2.01(b).

“Delayed Draw DIP Term Loan” shall mean the loan made by the Lenders to the Borrower on the Delayed Draw DIP Funding Date pursuant to Section 2.01(b)

“Delayed Draw Term Commitment” means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the Delayed Draw DIP Term Loans to the Borrower hereunder on the Delayed Draw DIP Funding Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from

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time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's Delayed Draw Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading "Delayed Draw Term Commitment", which shall total \$42,500,000 in the aggregate for all Lenders.

"DIP LC Commitment" means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the DIP LC Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's DIP LC Commitment as of the Effective Date is set forth on Annex I hereto under the heading "DIP LC Commitment", which shall total \$55,000,000 in the aggregate for all Lenders.

"DIP LC Loans" means the loans made by the Lenders to the Borrower on the Effective Date pursuant to Section 2.01(c).

"DIP Order" means, collectively, the Interim DIP Order and, from and after its entry by the Bankruptcy Court, the Final DIP Order.

"DIP Term Loans" shall mean, collectively, the Initial DIP Term Loans, the Delayed Draw DIP Term Loans, and the DIP LC Loans.

"Disqualified Capital Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans, LC Exposure or other obligations hereunder outstanding and all of the Commitments are terminated.

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

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

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

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

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

“Effective Date” means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02) and the Initial DIP Term Loans and the DIP LC Loans have been funded.

“Embargoed Person” has the meaning assigned to such term in Section 9.22.

“Environmental Laws” means any and all Governmental Requirements pertaining in any way to health, safety, the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any Subsidiary is conducting, or at any time has conducted, business, or where any Property of the Borrower or any Subsidiary is located, including, the Oil Pollution Act of 1990 (**“OPA”**), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (**“CERCLA”**), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (**“RCRA”**), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

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

“EP Contract” means that certain Gas Gathering and Processing Agreement (Portions of Atascosa, Dimmit and La Salle Counties) dated February 18, 2014, entered into between Frio LP and EP Energy E&P Company, L.P., a Delaware limited partnership, as in effect on the Effective Date.

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

“Equity Issuance” means (a) any issuance by the Borrower of shares of its Equity Interests to any Person that is not a Loan Party (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Loan Party into any Loan Party or any Subsidiary thereof. The term “Equity Issuance” shall not include (A) any Asset Sale or (B) any Debt Issuance.

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“Equity Issuance Proceeds” means (a) with respect to any Equity Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Equity Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Equity Issuance, and (b) with respect to existing Equity Interests, cash contributions made to the Borrower from the holders of its Equity Interests on account of common equity.

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

“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a “single employer” within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

“ERISA Event” means (a) a “Reportable Event” described in section 4043 of ERISA and the regulations issued thereunder, (b) the withdrawal of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt of a notice of withdrawal liability pursuant to section 4202 of ERISA or (f) any other event or condition which could reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

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

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

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

“Excepted Liens” means: (a) Liens for Taxes, assessments or other governmental charges or levies (other than Liens imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA) that arose prior to the Petition Date and which were, as of the Petition Date, not delinquent or which were being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens arising by operation of law in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) to the extent arising by operation of law, statutory landlord’s liens, operators’, interest owners’, vendors’, carriers’, warehousemen’s,

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repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) subject to the Cash Management Order, Liens arising solely by virtue of customary deposit account agreements with the creditor depository institution or any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution or any other Person (other than the Secured Parties pursuant to the Security Instruments); (e) zoning and land use requirements, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations affecting, and minor irregularities or deficiencies in title to, any real Property of the Borrower or any Subsidiary that do not secure Indebtedness and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Subsidiary or materially impair the value of such Property subject thereto; (f) to the extent in accordance with the Approved Budget (subject to Permitted Variances), Liens on cash or securities pledged to secure performance of tenders, surety, appeal and supersedeas bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations, obligations in respect of workers' compensation, unemployment insurance or other forms of government benefits or insurance and other obligations of a like nature incurred in the ordinary course of business; (g) Liens, titles and interests of lessors of Property leased by such lessors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such leases, and Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the Borrower's or such Subsidiary's leasehold interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such leases; (h) Liens, titles and interests of licensors of software and other intangible Property licensed by such licensors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such licenses, and Liens and encumbrances encumbering such licensors' titles and interests in such Property and to which the Borrower's or such Subsidiary's license interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such licenses; and (i) to the extent arising prior to the Petition Date, judgment and attachment Liens not giving rise to an Event of Default, *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired

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and no action to enforce such Lien has been commenced. Any Lien described in clauses (a) through (d) shall remain an “Excepted Lien” only for so long as (A) the appropriate Loan Party shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, (B) the appropriate Loan Party shall maintain adequate reserves related to such Lien to the extent required by GAAP, and (C) such Lien shall in all respects be subject and subordinate in priority to the Liens created and evidenced by the Security Instruments, except if and to the extent that the Governmental Requirements creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Liens created and evidenced by the Security Instruments; *provided* that no intention to subordinate the first priority Liens granted in favor of the DIP Agent for the benefit of the Secured Parties pursuant to the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

“**Excluded Taxes**” means, with respect to the DIP Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes (i) imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower or any Guarantor is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 5.04(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 5.03(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 5.03(a) or Section 5.03(c), and (d) any United States federal withholding taxes imposed by FATCA.

“**Executive Order**” has the meaning assigned to such term in Section 7.26(a).

“**Exigent Circumstance**” means the existence of any of the following events or conditions, in each case as determined by DIP Agent (at the direction of Required Lenders acting reasonably and in good faith): (i) any material portion of Collateral threatens to decline speedily in value; (ii) DIP Agent (at the direction of Required Lenders acting reasonably) believes that fraud, concealment, material misrepresentation, theft or the withholding or fraudulent removal of Collateral or proceeds of a material portion of Collateral has occurred; (iii) to the extent constituting an Event of Default, a Person (other than a Secured Party in their capacity as such) repossesses or forecloses upon any material portion of Collateral, or (iv) any other event or circumstance occurs or exists that materially and imminently threatens the value or liquidation prospects of any material portion of Collateral, the enforceability or priority of the Liens securing the Secured Obligations or the collectability thereof.

“**Exit Fee**” has the meaning assigned to such term in Section 3.05(e).

“Extraordinary Receipts” shall mean the Net Cash Proceeds received by any Loan Party not in the ordinary course of business (and not consisting of proceeds from the sale of inventory sold in the ordinary course of business), including, without limitation, (a) proceeds under any insurance policy on account of damage or destruction of any assets or property of such Loan Party (that are not Casualty Events), (b) indemnity payments, (d) foreign, United States, state or local tax refunds, (c) pension plan reversions and (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action.

“FATCA” means sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations or official interpretations thereof.

“FCPA” means the Foreign corrupt Practices Act of 1977, as amended.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Flood Insurance” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Area in a community participating in the National Flood Insurance Program.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the DIP Agent from three Federal funds brokers of recognized standing selected by it.

“FEMA” means the Federal Emergency Management Agency, an agency of the United States Department of Homeland Security that administers the National Flood Insurance Program.

“Final DIP Order” means a Final Order of the Bankruptcy Court in substantially the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a Final Order and to authorize and approve the Roll-Up in the full amount set forth on Schedule 2.01(d) and such other modifications as are satisfactory in form and substance to the DIP Agent and the Required Lenders in their discretion), which order shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the written consent of the DIP Agent or the Required Lenders.

“Final Order” means an order or judgment of the Bankruptcy Court as entered on its docket that has not, in whole or in part, been reversed, vacated, modified, amended or stayed pursuant to any applicable Federal Rule of Bankruptcy Procedure or any other applicable rule of civil or appellate procedure, and as to which the time to appeal, petition for certiorari, or seek re-argument or rehearing has expired, or as to which any right to appeal, petition for certiorari or seek re-argument or rehearing has been waived in writing in a manner satisfactory to the parties in interest, or if a notice of appeal, petition for certiorari, or motion for re-argument or rehearing was timely filed, the order or judgment has been affirmed by the highest court to which the order

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or judgment was appealed or from which the re-argument or rehearing was sought, or a certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument has expired.

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

“Financial Statements” means the Borrower and its Consolidated Subsidiaries’ audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for the fiscal year ending December 31, 2018, setting forth in each case in comparative form the figures for the previous fiscal year.

“Flood Insurance” means, for any owned real Property improved by one or more buildings located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets or exceeds the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in commercially reasonable amounts at least up to the maximum policy limits set under the National Flood Insurance Program.

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

“Flood Zone Documentation” means with respect to any fee interest in any real property improved by a Building or Mobile (Manufactured) Home located in the United States of any Loan Party, to the extent required to comply with Flood Laws: (1) a completed standard flood hazard determination form, (2) if the real property is located in a special flood hazard area, a notification to the applicable Loan Party (**“Borrower Notice”**) and, if applicable, notification to such Loan Party that flood insurance coverage under the National Flood Insurance Program is not available because the community does not participate in the National Flood Insurance Program, (3) documentation evidencing the applicable Loan Party’s receipt of the Borrower Notice and (4) if the Borrower Notice is required to be given and flood insurance is available in the community in which the real property is located, evidence of applicable flood insurance in such form, on such terms and in such amounts as required by the Flood Insurance Laws and as required by the DIP Agent.

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

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

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

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

“**General Partner**” means Southcross Energy Partners GP, LLC, a Delaware limited liability company and the sole general partner of the Borrower.

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

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

“**Guarantors**” means, collectively, each Subsidiary of the Borrower.

“**Guaranty and Collateral Agreement**” means that Debtor-in-Possession Guaranty and Collateral Agreement executed by the Borrower and the Guarantors in substantially the form of Exhibit E granting and confirming security interests in certain Collateral and unconditionally guarantying on a joint and several basis, payment of the Secured Obligations, as the same may be amended, modified or supplemented from time to time.

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

“**Hedging Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, “over-the-counter” or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act);

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provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Borrower or the Subsidiaries shall be a Hedging Agreement.

“Hedging Termination Value” means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

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

“Hydrocarbons” means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

“Immaterial Real Property” means any real Property designated by the Borrower as Immaterial Real Property, if and for so long as the fair market value (as reasonably determined by the Borrower and approved by the Required Lenders) of such Immaterial Real Property, together with all other Immaterial Real Property so designated by the Borrower, does not exceed \$1,000,000 at any time.

“Indebtedness” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services, except (i) trade accounts payable of such Person arising in the ordinary course of business if and to the extent that such trade accounts payable are not past due by more than ninety (90) days or that are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established or are subject to an offset in favor of such Person as a result of accounts receivable owed to such Person and (ii) non-cash purchase price adjustments or non-cash earnouts and the portion of any cash purchase price adjustments or cash earnouts that is not determinable; (d) all obligations under Capital Leases; (e) all obligations under Synthetic Leases; (f) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person, *provided, however*, that the amount of such Indebtedness of any Person described in this clause (f) shall, for purposes of this Agreement, be deemed to be equal to the

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lesser of (i) the aggregate unpaid amount of such Indebtedness or (ii) the fair market value of the Property encumbered; (g) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (i) obligations to pay for electricity, natural gas, other Hydrocarbons and other commodities under contracts having an initial term in excess of one (1) year even if such electricity, natural gas, other Hydrocarbons, and other commodities are not actually taken, received or utilized by such Person; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

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

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

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

“Initial DIP Term Loan” shall mean the loan made by the Lenders on the Effective Date pursuant to Section 2.01(a).

“Initial Roll-Up Loans” has the meaning given to such term in Section 2.01(d).

“Initial Term Commitment” means (a) with respect to each Lender, the commitment of such Lender to make a portion of the Initial DIP Term Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender’s Initial Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading “Initial Term Commitment”, which shall total \$30,000,000 in the aggregate for all Lenders.

“Intellectual Property” shall have the meaning assigned to such term in Section 7.16(d).

“Interest Election Request” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04, substantially in the form of Exhibit C.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last Business Day of each calendar month and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, following an Event of Default and during the continuance thereof, upon demand by the Required Lenders.

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“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect in its applicable Notice of Borrowing or Interest Election Request; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) no Interest Period for any Borrowing shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim DIP Order” means an interim order authorizing and approving, among other things, (a) the DIP Facilities and the extensions of credit thereunder including the incurrence by the Loan Parties of secured indebtedness in accordance with this Agreement, (b) the form of this Agreement and the other Loan Documents, (c) the granting of liens and claims in favor of the DIP Agent and Lenders, (d) the payment by the Loan Parties of the fees contemplated by this Agreement, (e) the provision of adequate protection to the Prepetition Term Lenders and the Prepetition Revolving Lenders in a manner satisfactory to the Required Lenders, (f) the other obligations of the Loan Parties under this Agreement and the other Loan Documents, and (g) such other matters as are usual and customary for orders of this kind, which order shall be in form and substance satisfactory to the Required Lenders in all respects and shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the prior written consent of the DIP Agent or the Required Lenders.

“Investment” means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person (including, without limitation, any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

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

“**Issuing Banks**” means, individually or collectively as the context requires, each of Wells Fargo, RBC and UBS AG, in their respective capacities as issuers of Letters of Credit hereunder (but limited, in the case of Wells Fargo, to Prepetition Letters of Credit deemed issued hereunder (and all amendments, replacements and extensions thereof)), their respective successors in such capacity as provided in Section 2.07(i), and, if requested by the Borrower and consented to by the DIP Agent (acting at the direction of the Required Lenders), any other Person who accepts such appointment and executes a joinder to this Agreement, in form and substance reasonably satisfactory to the Borrower and the DIP Agent, to act as an Issuing Bank under this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“**LC Cash Collateralization Amount**” means an amount equal to 103% multiplied by the amount of all LC Obligations existing at such time.

“**LC Commitment**” means, with respect to each Issuing Bank, the LC Commitment of such Issuing Bank as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement.

“**LC Disbursement**” means a payment made by any Issuing Bank pursuant to a Letter of Credit.

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

“**LC Obligations**” means, at any time, the aggregate maximum amount then available to be drawn under all issued and outstanding Letters of Credit, as calculated in accordance with Section 2.07(l).

“**LC Participant**” shall have the meaning assigned to such term in Section 2.07(d).

“**LC Sublimit**” means, at any time, \$52,597,087.38.

“**Lender Counsel**” means Willkie Farr & Gallagher LLP.

“**Lender Financial Advisors**” means Houlihan Lokey, Inc.

“**Lender Professionals**” means the Lender Financial Advisors and the Lender Counsel.

“**Lenders**” means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

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“**Letter of Credit**” means any standby letter of credit issued (or deemed issued) pursuant to this Agreement or any Letter of Credit Agreement, including without limitation, the Prepetition Letters of Credit deemed issued hereunder upon the Effective Date.

“**Letter of Credit Account**” means a blocked, non-interest bearing trust account maintained by the DIP Agent in which the proceeds of the DIP LC Loans shall be deposited and held as provided in this Agreement. Neither the Borrower nor any of the other Loan Parties shall have any property interest of any kind in the Letter of Credit Account or the funds held therein.

“**Letter of Credit Agreements**” means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit.

“**Letter of Credit Deposit Amount**” means, at any time, the total amount on deposit in the Letter of Credit Account at such time that is then available for disbursement by the Issuing Banks in the event of an LC Disbursement as provided in Section 2.07(e).

“**Letter of Credit Withdrawal Notice**” means a notice delivered by the Borrower signed by a Responsible Officer to the DIP Agent requesting a withdrawal of funds from the Letter of Credit Account, which notice shall set forth (i) the date of such withdrawal, (ii) the amount of such withdrawal, (iii) the identity of the customers and/or suppliers whose obligations will be cash collateralized and (iv) other information requested by the DIP Agent (at the direction of the Required Lenders) that is necessary or appropriate (as determined by the Required Lenders) to determine pro forma compliance with the Loan Documents.

“**Lewis Contract**” means that certain Gas Transportation, Processing and Purchase Agreement dated October 1, 2012, by and among Southcross Marketing Company Ltd., Lewis Petro Properties, Inc., and BP America Production Company, as amended.

“**LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum (rounded to the nearest 1/100th of 1%) determined by the DIP Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars (as set forth on the applicable Bloomberg screen page or by or such other commercially available source providing such quotations as may be designated by the DIP Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the LIBO Rate shall be the interest rate per annum determined by the DIP Agent to be the average of the rates per annum at which the DIP Agent is offered deposits in Dollars by major banks in the London interbank market in London, England at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period. Notwithstanding anything to the contrary contained in this definition, the LIBO Rate shall be deemed not to be less than one percent (1.0%) at any time.

“**Lien**” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law,

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statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations. For the purposes of this Agreement, the Borrower and its Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

“**Loan**” or “**Loans**” means the DIP Term Loans and the Roll-Up Loans.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Letter of Credit Agreements, the Letters of Credit, the Fee Letters, and the Security Instruments.

“**Loan Parties**” and “**Loan Party**” mean, collectively or individually as the context requires, the Borrower and the Guarantors.

“**Material Adverse Change**” means any circumstance or event that has had a Material Adverse Effect.

“**Material Adverse Effect**” means any event, condition or circumstance (other than as a result of (i) the commencement of the Chapter 11 Cases by the Loan Parties, the events and conditions related and/or leading up thereto and the effect of bankruptcy conditions in the industry in which the Borrower operates as of the Effective Date, each as disclosed in materials provided to the Prepetition Term Lenders prior to the Petition Date or in the “first day” motions or declarations filed in the Chapter 11 Cases, and (ii) any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the Chapter 11 Cases) that, individually or in the aggregate, (a) has had or would reasonably be expected to have, a material adverse effect on the business, operations, properties, assets or condition of the Borrower and its Subsidiaries, taken as a whole or (b) has resulted in, or would reasonably be expected to result in, a material impairment of the validity or enforceability of, or a material impairment of the material rights, remedies or benefits available to the Lenders, the Issuing Banks, the DIP Agent or the collateral agent under any Loan Document.

“**Material Contracts**” means, collectively, (a) the EP Contract, (b) the Lewis Contract, (c) the Services Agreements, (d) the Shared Services Agreement, and (e) each other contract for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Material Indebtedness**” means, to the extent incurred on or after the Petition Date, Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount equals or exceeds \$4,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

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“Material Real Property” means any real Property which is not Immaterial Real Property.

“Maturity Date” means the date that is the earliest to occur of: (a) the Scheduled Maturity Date; (b) the effective date of any confirmed Acceptable Plan or any other Chapter 11 Plan of the Loan Parties; (c) the date on which all or substantially all of the assets of the Loan Parties are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code and (d) the acceleration of the maturity of the Loans upon the occurrence of any Event of Default.

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

“Mortgage” means each mortgage, deed of trust or any other document (if any) creating and/or evidencing a Lien on real or immovable Property and other Property in favor of the DIP Agent for the benefit of the Secured Parties, which shall be in a form reasonably satisfactory to the DIP Agent, as the same may be amended, modified, supplemented or restated from time to time in accordance with the Loan Documents.

“Mortgaged Property” means any real Property owned by the Borrower or any of its Subsidiaries that is subject to a Lien pursuant to the DIP Orders and/or a Mortgage.

“National Flood Insurance Program” means the program created by the United States Congress pursuant to the Flood Insurance Laws, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

“Net Cash Proceeds” means, for any event requiring a repayment of Loans pursuant to Section 3.04(b), the gross cash proceeds (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) from such event, net of reasonable attorneys’ fees, accountants’ fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such event (other than any Lien pursuant to a Security Instrument) and other customary fees and expenses actually incurred in connection therewith, and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“Net Sale Proceeds” means for any sale or other disposition of Property pursuant to an Asset Sale, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of (a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than the Secured Obligations) which is

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permitted hereunder and which is secured by the respective Property which was sold or otherwise disposed of, (c) the estimated net marginal increase in income taxes which will be payable by the Borrower or any Subsidiary with respect to the fiscal year of the Borrower in which the Asset Sale occurs as a result of such Asset Sale, and (d) the amount of all reserves required to be maintained by the Borrower or any Subsidiary in accordance with GAAP for any potential indemnity obligations that may be required to be made by the Borrower or any Subsidiary of as a result of such Asset Sale; *provided, however*, that (i) such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the DIP Agent a certificate signed by a Responsible Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than thirteen (13) months following the date of the respective Asset Sale), the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Borrower or any Subsidiary shall constitute Net Sale Proceeds on such date received by the Borrower and/or any Subsidiary from such Asset Sale, and (ii) at such time as the Borrower and the Subsidiaries are no longer required to maintain any indemnity reserves in accordance with GAAP as a result of any Asset Sale, the amount (if any) by which such reserved amount in respect of such Asset Sale exceeds the actual amount of indemnity payments made by the Borrower or any Subsidiary for which such reserves were required to be maintained in respect of such Asset Sale shall constitute Net Sale Proceeds at such time, in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“**Notes**” means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

“**Notice of Borrowing**” means a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the DIP Agent.

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

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non US 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 Lender or Issuing Bank, Taxes imposed as a result of a present or former connection between such Lender or Issuing Bank and

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the jurisdiction imposing such Tax (other than connections arising from such Lender or Issuing Bank 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 or documentary taxes or any other excise or Property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 5.04).

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

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

“Partnership Agreement” means that certain Third Amended and Restated Limited Partnership Agreement of the Borrower dated as of August 4, 2014, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Payment in Full” means the Secured Obligations hereunder have been indefeasibly paid in full in cash and the Commitments have been reduced to zero (0) (other than (i) contingent indemnification obligations for which no Claim has been asserted and (ii) any Letters of Credit outstanding that (A) have been cash collateralized pursuant to Section 2.07(j)(iii)(B) or (B) have had other arrangements made with respect to them that are reasonably satisfactory to the applicable Issuing Bank).

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

“Permitted Variances” has the meaning assigned to such term in Section 9.01.

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

“Petition Date” has the meaning assigned to such term in the recitals to this Agreement.

“Plan” means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or a Subsidiary or an ERISA Affiliate.

“Platform” has the meaning assigned to such term in Section 8.01.

“Prepetition Agent” means, individually or collectively as the context may require, the Prepetition Revolving Agent and the Prepetition Term Agent.

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“Prepetition Collateral” means the "Collateral" under (and as such term is defined in) the Prepetition Loan Agreements.

“Prepetition Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition LC Issuers” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Lenders” means, individually or collectively as the context may require, the Prepetition Revolving Lenders and the Prepetition Term Lenders.

“Prepetition Letters of Credit” means, collectively, letters of credit issued by the Prepetition LC Issuers under the Prepetition Revolving Loan Facility, which, as of the Effective Date, were issued and undrawn, and which are listed on Annex II hereto.

“Prepetition Loan Facility” means, individually or collectively as the context may require, the Prepetition Revolving Facility and the Prepetition Term Facility.

“Prepetition Obligations” means, collectively, (i) the “Secured Obligations” as such term is defined in the Prepetition Revolving Loan Agreement and (ii) the “Secured Obligations” as such term is defined in the Prepetition Term Loan Agreement.

“Prepetition Revolving Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Lenders” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loans” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Secured Parties” means the “Secured Parties” as such term is defined in the Prepetition Credit Agreements.

“Prepetition Term Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Term Lenders” has the meaning assigned to such term in the recitals to this Agreement.

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“Prepetition Term Loan Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Term Loan Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Term Loans” has the meaning assigned to such term in the recitals to this Agreement.

“Prime Rate” means, for any day, the prime lending rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, **“Prime Rate”** shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the DIP Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

“Professional Fees” has the meaning assigned to such term in the DIP Orders.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including, without limitation, cash, securities, accounts, contract rights and, with respect to any Person, Equity Interests or other ownership interests of any other Person), whether now in existence or owned or hereafter acquired.

“Proposed Budget” has the meaning assigned to such term in Section 8.01(q).

“Public Lender” has the meaning assigned to such term in Section 8.01.

“Purchase Money Indebtedness” means Indebtedness, the proceeds of which are used to finance the acquisition, construction, installation, transport and/or improvement of inventory, equipment or other Property in the ordinary course of business.

“Qualified APA” means an asset purchase agreement, stock purchase agreement or any similar agreements or documents in respect of a Qualified Sale Transaction.

“Qualified Sale Transaction” means a Section 363 Sale which provides for Payment in Full concurrently with the consummation of such sale and is in form and substance reasonably satisfactory to the Required Lenders.

“RBC” means Royal Bank of Canada - New York Branch.

“Recovery Event” means the receipt by the Borrower or any Subsidiary of any cash insurance proceeds or condemnation awards payable by reason of a Casualty Event.

“Redemption” means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the

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segregation of funds with respect to any of the foregoing) of such Indebtedness. “**Redeem**” has the correlative meaning thereto.

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

“**Regulation D**” means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

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

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

“**Remedial Work**” has the meaning assigned to such term in Section 8.11(a).

“**Required Lenders**” means, at any time while no Credit Exposure is outstanding one or more Lenders having greater than fifty percent (50%) of the aggregate Commitments; and at any time while any Credit Exposure is outstanding, one or more Lenders holding greater than fifty percent (50%) of the total Credit Exposure (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(d)); *provided* that the Commitments and the principal amount of the total Credit Exposure of the Defaulting Lenders (if any) shall be excluded from the determination of Required Lenders.

“**Responsible Officer**” means, as to any Person, the Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower or of the General Partner acting on behalf of the Borrower.

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

“**Roll-Up**” has the meaning given to such term in Section 2.01(d).

“**Roll-Up Loans**” has the meaning given to such term in Section 2.01(d).

“**Sanctions**” has the meaning assigned to such term in Section 7.26(d).

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

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“Scheduled Maturity Date” means [●]¹; *provided* that the Borrower shall have the right to extend the Scheduled Maturity Date for a period of ninety (90) days subject to satisfaction of the following conditions precedent: (i) the Borrower shall have provided the DIP Agent with not less than five (5) Business Days’ prior written notice of its request for such extension; (ii) the Required Lenders shall have consented to such extension; and (iii) the Borrower shall have paid to the DIP Agent for the benefit of each Lender that consents to the extension within four (4) Business Days of the Borrower’s request, an extension premium in an amount equal to 1.00% of such Lender’s Loans then outstanding (which premium shall be paid in cash unless the Required Lenders in their sole discretion elect that such premium be paid-in-kind).

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

“Section 363 Sale” means a sale of all or substantially all of the assets and business of the Loan Parties conducted pursuant to Section 363 of the Bankruptcy Code (it being understood, for the avoidance of doubt, that the Loan Parties may sell Properties listed on Schedule 9.11 pursuant to Section 9.11(j) and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii)).

“Secured Obligations” means any and all obligations of and amounts owing or to be owing by the Borrower, any Subsidiary or any other Loan Party (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the DIP Agent, any Issuing Bank, any trustee or any Lender under any Loan Document; (b) [reserved]; (c) to any Bank Products Provider in respect of any Bank Products; and (d) all renewals, extensions and/or rearrangements of any of the above. For the avoidance of doubt, the “Secured Obligations” shall include all Loans, Initial DIP Term Loans, Delayed Draw DIP Term Loans, Roll-Up Loans, and all Fees hereunder or under any other Loan Document.

“Secured Parties” means, collectively, the DIP Agent, each Issuing Bank, each Lender, and each Bank Products Provider.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit J.

“Security Instruments” means the DIP Orders, the Guaranty and Collateral Agreement, the Mortgages, the other agreements, instruments or certificates described or referred to in Schedule 1.02(a), and any and all other agreements, instruments, consents, or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Bank Products agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

¹ 6 months from the petition date.

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“Services Agreements” means, collectively, (a) that certain Transportation Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between Southcross NGL Pipeline Ltd. and Frio LaSalle Pipeline, LP, (b) that certain Gas Gathering and Treating Agreement dated and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, LP, and (c) that certain Master Compression Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, L.P.

“Shared Services Agreement” means that certain Shared Services Agreement, dated March 31, 2019, among the Borrower, Southcross Energy GP LLC, Southcross Holdings and Southcross Holdings GP, LLC.

“Southcross Holdings” means Southcross Holdings LP, a Delaware limited partnership.

“Sponsors” means one or more funds, accounts, or other entities managed or advised by either Tailwater Capital LLC or EIG Management Company, LLC.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the DIP Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Structuring Fee” has the meaning assigned to such term in Section 3.05(a).

“Subsidiary” means: (a) any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by (i) another Person, (ii) one or more of such other Person’s Subsidiaries, or (iii) collectively, such other Person and one or more of such other Person’s Subsidiaries, and (b) any partnership of which such other Person or any of such other Person’s Subsidiaries is a general partner. Unless otherwise indicated herein, each reference to the term **“Subsidiary”** means a Subsidiary of the Borrower.

“Superpriority Claim” shall mean a claim against any Loan Party in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other post-petition claims of the kind specified in, or otherwise arising or ordered under, any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726 (to the extent permitted by

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law), 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment, other than the Carve-Out.

“Synthetic Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of U.S. federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

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

“Term Commitment” means (a) with respect to each Lender, the Initial Term Commitment or Delayed Term Commitment of such Lender, as the context may require, in each case, as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement and (b) the aggregate Term Commitments of all Lenders. The aggregate Term Commitments of all Lenders as of the Effective Date shall total \$72,500,000.

“Testing Period” means (a) for each Variance Testing Date that is prior to the date that is four weeks after the Petition Date, the period from the Petition Date through the immediately preceding calendar week (ending on a Friday) and (b) for each Variance Test Date that is on or after the date that is four weeks after the Petition Date, the rolling four-week period most recently ended on the last Friday prior to the delivery thereof.

“Transactions” means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof (including, without limitation, the Roll-Up), the issuance or deemed issuance of Letters of Credit hereunder, and the grant of Liens by the Borrower on Collateral pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations and the other obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor’s grant of the security interests and provision of Collateral under the Security Instruments, and the grant of Liens by such Guarantor on Collateral pursuant to the Security Instruments.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

“UBS AG” means UBS AG, Stamford Branch.

“USA Patriot Act” has the meaning assigned to such term in Section 12.16.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.03(f).

“Variance Report” has the meaning assigned to such term in Section 8.01(q)(ii).

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

“Wells Fargo” means Wells Fargo Bank, N.A.

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

“Wind-Down Budget” has the meaning assigned to such term in Section 8.23(c).

“Withdrawal” shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(e).

“Withdrawal Request” shall mean a written request by an Issuing Bank for a Withdrawal, substantially in the form of Exhibit I.

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

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

Section 1.03 Types of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a **“Eurodollar Loan”**), and Borrowings may be classified and referred to by Type (e.g., a **“Eurodollar Borrowing”**).

Section 1.04 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law or regulation shall be construed, unless otherwise specified, as referring to such law or regulation as amended, modified, supplemented, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to

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refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP. (a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the DIP Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower’s independent certified public accountants concur and which are disclosed to the DIP Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that unless the Borrower and the Required Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above of the definition of “Capital Lease,” all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance of the Financial Accounting Standards Board on February 25, 2016 or an Accounting Standards Update (“ASU”) shall continue to be accounted for as operating leases for purposes of this agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized Lease Obligations in the Company’s financial statements.

Section 1.06 Time Periods. Unless otherwise specified, in the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

ARTICLE II THE CREDITS

Section 2.01 Commitments.

(a) Initial DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having an Initial Term Commitment severally agrees to make its portion of the Initial DIP Term Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s Initial Term Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other

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provisions hereof), the funded portion of the Initial DIP Term Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the Initial DIP Term Loan (it being agreed that the full principal amount of the Initial DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). Once the Initial Term Loan has been borrowed, in any amount, the Initial Term Commitment shall be reduced to \$0.

(b) Delayed Draw DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having a Delayed Draw Term Commitment severally agrees to make its portion of the Delayed Draw DIP Term Loan to the Borrower on the Delayed Draw DIP Funding Date in a principal amount equal to such Lender’s Delayed Draw Term Commitment as of such date; *provided that*, the aggregate amount of DIP Term Loans shall not exceed the amount the Borrower is authorized to borrow pursuant to the terms of the Final DIP Order. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP Term Loan to be made on such Delayed Draw DIP Funding Date (*i.e.*, the amount advanced to Borrower on such dates) shall be equal to 98.5% of the principal amount of the Delayed Draw DIP Term Loan (it being agreed that the full principal amount of the Delayed Draw DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on such date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Delayed Draw Term Commitment shall be reduced to \$0 upon the earlier of (a) the date the Delayed Draw Term Loan has been borrowed, in any amount, and (b) the date that is thirty (30) days after the date the Final DIP Order is entered.

(c) DIP LC Loan. Subject to the terms and conditions of this Agreement, each Lender having a DIP LC Commitment severally agrees to make its portion of the DIP LC Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s DIP LC Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP LC Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the DIP LC Loan (it being agreed that the full principal amount of the DIP LC Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Borrower hereby directs the applicable Lenders and the DIP Agent to cause the proceeds of the DIP LC Loan (net of the original issue discount set forth above) to be deposited in the Letter of Credit Account on the Effective Date. Once the DIP LC Loan has been borrowed, in any amount, the DIP LC Commitment shall be reduced to \$0.

(d) Roll-Up Loans. Subject to the terms and conditions set forth herein, (i) upon entry of the Final DIP Order, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the “Initial Roll-Up Loans”), on a pro rata basis (based on the Initial DIP Term Loans and DIP LC Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to

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Section 2.01(a) or (c)), and (ii) on the Delayed Draw DIP Funding Date, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (together with the Initial Roll-Up Loans, the “**Roll-Up Loans**”), on a pro rata basis (based on the Delayed Draw DIP Term Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to Section 2.01(b)), in each case, in an aggregate principal amount equal to \$1.00 of Prepetition Term Loans of such Lender or Affiliate of such Lender for each \$1.00 of DIP Term Loans (and such Roll-Up Loans shall be deemed funded on the date the Final DIP Order is entered or the Delayed Draw DIP Funding Date, as applicable, and shall constitute and shall be deemed to be Loans hereunder) (the foregoing substitution and exchange of Prepetition Term Loans into Roll-Up Loans shall be defined herein, generally, as the “**Roll-Up**”).

(e) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting “Required Lenders” hereunder, Initial DIP Term Loans, Delayed Draw DIP Term Loans, the DIP LC Loans, and the Roll-Up Loans shall constitute a single class of Loans.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. The DIP Term Loans shall be made by the Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. The Roll-Up Loans and the DIP LC Loans shall be deemed Borrowings entirely of ABR Loans.

(c) Minimum Amounts; Limitation on Number of Borrowings. Borrowings of more than one Type may be outstanding at the same time, provided that there shall not at any time be more than a total of four (4) Eurodollar Borrowings outstanding. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(d) Notes. The Loans made by each Lender, if requested by such Lender, shall be evidenced by one or more promissory notes of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement, or (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption, as of the effective date of such Assignment and Assumption, payable to such Lender in a principal amount equal to its Commitments (or Loans, if applicable),

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and otherwise duly completed. In the event that any Lender's Commitment or Loans increases or decreases for any reason (whether pursuant to Section 12.04(b) or otherwise), if requested by such Lender, the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Commitment or Loans, as applicable, after giving effect to such increase or decrease, and otherwise duly completed. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its applicable Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 Procedure for Advance of Loans.

(a) Term Loan. To request a Borrowing of DIP Term Loans, the Borrower shall give the DIP Agent an irrevocable Notice of Borrowing (provided that any Notice of Borrowing may be conditioned upon the entry of the Interim DIP Order or the Final DIP Order) prior to (a) in the case of a Eurodollar Borrowing [11:00 a.m.], New York City time, three (3) Business Days before (or one (1) Business Day before in the case of a Eurodollar Borrowing on the Effective Date) the proposed Borrowing (or such shorter period approved by DIP Agent prior to the date of such Borrowing) or (b) in the case of an ABR Borrowing, not later than [11:00a.m], New York City Time, one (1) Business Day before the date of the proposed Borrowing, requesting that the Lenders make the applicable DIP Term Loans on such date. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of ABR Loans. Thereafter, the Borrower may elect to convert a Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans to a different Type or to continue a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans as the same Type and, in the case of a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than four (4) Eurodollar Borrowings outstanding hereunder at any one time.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the DIP Agent an Interest Election Request by the time that a Notice of Borrowing would be required under Section 2.03 if the Borrower were requesting a

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Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Sections 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the DIP Agent. Promptly following receipt of an Interest Election Request, the DIP Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) Notwithstanding anything to the contrary herein, Roll-Up Loans and DIP LC Loans shall only be borrowed as ABR Loans, and may not be converted to Eurodollar Loans.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by [12:00

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noon, New York City time], to the account of the DIP Agent most recently designated by it for such purpose by notice to the Lenders. The Borrower hereby irrevocably authorizes the DIP Agent to disburse the proceeds of the DIP Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing (or in the case of proceeds of the DIP LC Loans, to the Letter of Credit Account). Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner.

(b) Funding by the Lenders; Presumption by the DIP Agent. Unless the DIP Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the DIP Agent such Lender's share of such Borrowing, the DIP Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the DIP Agent, then the applicable Lender and the Borrower severally agree to pay to the DIP Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the DIP Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the DIP Agent for the same or an overlapping period, the DIP Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the DIP Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the DIP Agent.

Section 2.06 [Reserved].

Section 2.07 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of dollar denominated Letters of Credit for its own account or for the account of any of its Subsidiaries, in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder, if, after giving effect to such issuance, amendment, renewal or extension, (i) the LC Cash Collateralization Amount would exceed the Letter of Credit Deposit Amount, (ii) the LC Exposure would exceed the LC Sublimit, or (iii) the aggregate LC Exposure for any Issuing Bank shall not exceed its applicable LC Commitment. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

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(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.

The Prepetition Letters of Credit shall be deemed to have been cancelled and re-issued hereunder as of the Effective Date. To request the issuance of any other Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall fax (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the DIP Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.07(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(vi) specifying the current total LC Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total LC Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(vii) specifying the current Letter of Credit Deposit Amount and calculating the *pro forma* LC Cash Collateralization Amount (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

Each notice shall constitute a representation and warranty with respect to the information set forth therein and that after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (x) the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount, (y) the LC Exposure shall not exceed the LC Sublimit, and (z) each condition precedent set forth in Section 6.02 has been satisfied with respect to such Letter of Credit.

If requested by the applicable Issuing Bank in connection with any request for a Letter of Credit (other than the Prepetition Letters of Credit deemed to be issued hereunder on the Effective Date), the Borrower also shall submit an appropriately completed letter of credit application on such Issuing Bank's standard form as in effect from time to time, which application may require the inclusion of draft language for such Letter of Credit that is

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reasonably acceptable to such Issuing Bank and may be required to be signed by a Responsible Officer of the Borrower.

No Issuing Bank will be required to: (A) issue any Letter of Credit if (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (2) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally, (3) except as otherwise agreed by such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$10,000, (4) such Letter of Credit is to be denominated in a currency other than Dollars, or (5) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (B) amend or extend any Letter of Credit if such Issuing Bank would not be required at such time to issue the Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is ten (10) Business Days prior to the Maturity Date. Each Letter of Credit with a one (1) year term may provide for the renewal thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above. Notwithstanding the foregoing, Letters of Credit may be issued with an expiration date that extends past the date set forth in clause (ii) above and so long as such Letter of Credit is cash collateralized pursuant to Section 2.07(j)(iii)(B).

(d) LC Participations. Any Issuing Bank may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any other Issuing Bank, sell participations in Letters of Credit (up to the aggregate amount available to be drawn under such Letter of Credit) or LC Disbursements that have not been reimbursed by the Borrower as provided in Section 2.07(e) to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, an "**LC Participant**"); *provided* that (A) such Issuing Bank's obligations under this Agreement shall remain unchanged, (B) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, the Lenders and any other Issuing Banks shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Banks's rights and obligations under this Agreement.

(e) Reimbursement. (i) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to

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the DIP Agent for the account of such Issuing Bank an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York time, on (x) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that the Borrower's obligation to reimburse such Issuing Bank with respect to such LC Disbursement shall first be satisfied by funds disbursed to such Issuing Bank from the Letter of Credit Account and applied to such reimbursement obligations in accordance with clauses (ii) through (iv) of this Section 2.07(e) (and the Borrower hereby irrevocably authorizes and instructs such Issuing Bank to request such withdrawals and applications without notice of any kind or further order or action by the Bankruptcy Court) Promptly following receipt by the DIP Agent of any payment from the Borrower pursuant to this Section 2.07(e), the DIP Agent shall distribute such payment to the applicable Issuing Bank.

(ii) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, such Issuing Bank may request that the DIP Agent disburse funds from the Letter of Credit Account to such Issuing Bank to reimburse such Issuing Bank for such LC Disbursement, by delivering to the DIP Agent a Withdrawal Request specifying (A) the amount of the disbursement to be made to such Issuing Bank, (B) the Letter of Credit to which such disbursement relates and (C) the wiring information of the bank account of such Issuing Bank to which such funds are to be sent. Promptly following its receipt of a Withdrawal Request, the DIP Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Withdrawal Request to the account of the Issuing Bank specified in such Withdrawal Request. All proceeds of the DIP LC Loans shall be held in the Letter of Credit Account at all times until such proceeds are disbursed or otherwise applied in accordance with this Agreement.

(iii) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account hereunder, the DIP Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Withdrawal Request submitted by an Issuing Bank as evidence that (A) an LC Disbursement has been made by such Issuing Bank in the amount specified in such Withdrawal Request and (B) such Issuing Bank is entitled to receipt funds from the Letter of Credit Account in the amount specified in such Withdrawal Request. Notwithstanding anything herein to the contrary, the DIP Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The DIP Agent shall have no duty to inquire or investigate whether any Issuing Bank is entitled to receive the funds requested in the applicable Withdrawal Request, and shall not be deemed to have any knowledge as to whether or not any such Withdrawal Request is permitted to be given.

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(iv) For the avoidance of doubt, all DIP LC Loans shall be Loans for all purposes hereunder and, notwithstanding that the proceeds of such DIP LC Loans are held in the Letter of Credit Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents to the same extent as all other Loans. The Borrower shall pay to the DIP Agent upon demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance of the Letter of Credit Account

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.07(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.07(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the DIP Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a

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Letter of Credit. Each Issuing Bank shall promptly notify the Borrower by telephone (confirmed by facsimile (with a copy to the Agent)) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or funds withdrawn from the Letter of Credit Account), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.07(h) shall be for the account of the applicable Issuing Bank.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the DIP Agent (acting at the direction of the Required Lenders), the replaced Issuing Bank and the successor Issuing Bank. The DIP Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(a). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous or existing Issuing Bank, or to such successor and all previous and existing Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) Establishment of Letter of Credit Account. The DIP Agent shall establish the Letter of Credit Account.

(ii) Deposits in Letter of Credit Account. The Letter of Credit Account shall be funded by the Borrower on the Effective Date from the proceeds of the DIP LC Loans advanced pursuant to Section 2.01(c).

(iii) Withdrawals from and Closing of Letter of Credit Account. Amounts on deposit in the Letter of Credit Account shall be withdrawn and distributed as follows:

(A) in accordance with Section 2.07(e) above;

(B) upon delivery of a Letter of Credit Account Withdrawal Notice to the DIP Agent at least two (2) Business Days prior to the date of a requested withdrawal, the Borrower may withdraw an amount not to

exceed in the aggregate, together with all other such withdrawals, the Alternate Cash Collateral Amount; *provided* that the proceeds of such withdrawal shall be used by the Borrower and the other Loan Parties solely to cash collateralize the obligations of the vendors and suppliers of the Loan Parties in accordance with Section 9.03(j);

(C) the Borrower may from time to time request the release of cash collateral from the Letter of Credit Account; *provided* that the Borrower shall direct that 100% of the amounts withdrawn immediately prepay the Loans in the amount of the cash so released; *provided, further*, that any prepayment pursuant to this clause shall be applied to the Loans in accordance with Section 3.04(c); *provided, further*, that in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such release;

(D) upon the Maturity Date, unless otherwise specified by an order rendered by the Bankruptcy Court: (1) if the DIP Agent has received written notice from each Issuing Bank that all Letters of Credit issued by such Issuing Bank have expired or been cancelled (or that a “backstop” letter of credit or other cash collateralization thereof at 103% pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank) (such written notice, an “**LC Termination Notice**”), the DIP Agent shall, unless otherwise directed by the Required Lenders, withdraw from the Letter of Credit Account the aggregate amount then on deposit therein and apply such amounts to repayment of the Secured Obligations as set forth in Section 10.02(c) or (2) if the DIP Agent has not received such LC Termination Notice, the DIP Agent shall withdraw from the Letter of Credit Account the aggregate amount then on deposit therein that is equal to 103% of the face amount of Letters of Credit then outstanding and disburse such amounts in accordance with a written direction from the Issuing Banks (or, in the absence of such written direction, the DIP Agent may request that the Bankruptcy Court make such determination).

Except as otherwise provided in clause (iii) above, or any Letter of Credit Agreement, amounts in the Letter of Credit Account may not be withdrawn by the Borrower or used for any purpose other than the reimbursement of the Issuing Banks or repayment of the Secured Obligations hereunder.

(iv) The Borrower hereby grants to the DIP Agent, for the benefit of the Issuing Banks and the other Secured Parties, an exclusive superpriority and continuing perfected security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor.

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(v) The Borrower's obligation to deposit amounts pursuant to this Section 2.07(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any of its Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the DIP Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantors' obligations under this Agreement and the other Loan Documents. Subject to Sections 2.07(j)(iii)(C) and (D), the DIP Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Such deposits shall not bear interest.

(k) Applicability of ISP. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and such Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Calculation of Maximum Stated Amount. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

ARTICLE III

PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans. If not sooner paid (pursuant to Section 3.04), the Borrower shall pay the DIP Term Loan and all other Secured Obligations, or in the case of Letters of Credit cash collateralized in accordance with Section 2.07(j)(iii)(D), in full and in cash, together with accrued interest thereon, on the Maturity Date.

Section 3.02 Interest.

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(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at an annual rate equal to the sum of (i) the Alternate Base Rate *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at an annual rate equal to the sum of (i) the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, or if any principal of or interest on any Loan or any fee or other amount payable by the Borrower or any other Loan Party hereunder or under any other Loan Document is not paid when due, whether at stated maturity, upon acceleration or otherwise, then all Loans outstanding, in the case of an Event of Default, and such overdue amount, in the case of a failure to pay amounts when due, shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2.0%) *plus* (i) when used with respect to obligations other than Loans, an interest rate equal to the rate applicable to ABR Loans as provided in Section 3.02(a), and (ii) when used with respect to Loans the rate otherwise applicable to such Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; *provided* that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the DIP Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the DIP Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Interest Period; or

(b) the DIP Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect

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the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period; then the DIP Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the DIP Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing (without giving effect to clause (c) of the definition of Alternative Base Rate).

Section 3.04 Prepayments.

(a) Optional Prepayments.

(i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (other than the Exit Fee), subject to prior notice in accordance with Section 3.04(a)(ii).

(ii) The Borrower shall notify the DIP Agent by telephone (confirmed by facsimile or e-mail) of any prepayment hereunder (A) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided*, that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked (by written notice to the DIP Agent on or prior to the specified effective date) if such condition is not satisfied (provided that the failure of such condition shall not relieve the Borrower from its obligations under Section 5.02 in respect thereof). Promptly following receipt of any such notice relating to a Borrowing, the DIP Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. Each optional prepayment made pursuant this Section 3.04(a) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(b) Mandatory Prepayments. Subject to the Carve-Out and the Wind-Down Budget (if any):

(i) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Extraordinary Receipt, an amount equal to 100% of the Net Cash Proceeds from such Extraordinary Receipt shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(ii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Asset Sale made pursuant to Section 9.11(f) and (j), an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied by the Borrower on such date as a mandatory repayment in accordance with Section 3.04(c).

(iii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Cash Proceeds from such Recovery Event shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(iv) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any issuance of Indebtedness (other than Indebtedness permitted by Section 9.02), an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(v) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any Equity Issuance Proceeds, an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(vi) Each optional prepayment made pursuant this Section 3.04(b) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(vii) If the Borrower is required to make a mandatory prepayment of Eurodollar Borrowings under this Section 3.04, the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the DIP Agent in a non-interest bearing cash collateral account maintained by and in the sole dominion and control of the DIP Agent. Any amounts so deposited shall be held by the DIP Agent as collateral for the prepayment of such Eurodollar Rate Loans and shall be applied to the prepayment of the applicable Eurodollar Rate Loans at the end of the current Interest Periods applicable thereto.

(c) Prepayments Waterfall. All Prepayments pursuant to this Section 3.04 shall be accompanied by accrued interest to the extent required by Section 3.02. Subject to the Carve-Out and the Wind-Down Budget (if any), each prepayment of Borrowings pursuant to this Section 3.04 shall be applied by the Borrower, in accordance with the DIP Order, and to the extent not in contravention with the DIP Order: (i) *first*, ratably to pay the Exit Fee, if applicable, (ii) *second*, to be remitted by the Borrower to the DIP Agent and applied by the DIP Agent ratably to repay the DIP Term Loans then outstanding, (iii) *third*, to be remitted by the Borrower to each of the Prepetition Term Agent and the Prepetition Revolver Agent, to be used by such Prepetition Agent to pay any superpriority adequate protection claims of the Prepetition Secured

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Parties on a pro rata basis; and (iv) *thereafter*, to be remitted by the Borrower to the Prepetition Revolving Agent, the Prepetition Term Agent and the DIP Agent, in such amounts to ratably repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); *provided that*, each repayment of Borrowings made under each tranche shall be applied, *first* ratably to any ABR Borrowings then outstanding under such tranche, and, *second*, to any Eurodollar Borrowings then outstanding under such tranche; *provided further*, if more than one Eurodollar Borrowing is outstanding under such tranche, such repayments shall be made to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(d) No Premium or Penalty. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty (other than the Exit Fee), except as required under Section 5.02.

(e) Notice of Prepayment. The Borrower shall notify the DIP Agent by written notice of any mandatory prepayment under Section 3.04(b) not later than 11:00 a.m., New York City time, two Business Days before the date of such prepayment. Each such notice shall specify the prepayment date (which shall be a Business Day), the principal amount of each Borrowing or portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the DIP Agent shall advise the Lenders of the contents thereof.

(f) No Reborrowings. Amounts prepaid pursuant to this Section 3.04 may not be reborrowed.

Section 3.05 Fees.

(a) Structuring Fees. The Borrower agrees to pay to the DIP Agent, for the benefit of each Lender, a structuring fee (the "Structuring Fee") equal to 1.00% of the aggregate amount of such Lender's Commitment, which shall be due and payable on the Effective Date either in cash, or at the option of the Required Lenders, as "original issue discount" from the funded amounts advanced to Borrower on the Effective Date.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to each Issuing Bank, for its own account, (x) a fronting fee equal to 0.125% of the stated amount of each Prepetition Letter of Credit deemed issued by it hereunder, and (y) a fronting fee equal to 0.50% of the stated amount of each other Letter of Credit issued by it, *provided that*, in each case, in no event shall such fronting fee be less than \$750.00 for any Letter of Credit, and (ii) to each Issuing Bank, for its own account, its standard fees with respect to the issuance, amendment, transfer, renewal or extension of any Letter of Credit issued by it or processing of drawings thereunder payable upon the effectiveness thereof. Fronting fees shall be payable in advance (1) with respect to any Prepetition Letters of Credit deemed issued hereunder, on the Effective Date, and (2) with respect to any other Letter of Credit, on the date of issuance of such Letter of Credit.

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Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand.

(c) Commitment Premiums. The Borrower agrees to pay to the DIP Provider Parties (as defined in the Commitment Letter), for their own account, the premiums payable in the amounts and at the times set forth in the Commitment Letter.

(d) DIP Agent Fees. The Borrower agrees to pay to the DIP Agent, for its own account, fees payable in the amounts and at the times set forth in the applicable Agency Fee Letter.

(e) Exit Fees. The Borrower shall pay to the DIP Agent, for the ratable benefit of each Lender, an exit fee (the “**Exit Fee**”) equal to 1.50% of the aggregate amount of such Lender’s DIP Term Loans and unused Delayed Draw Term Commitment. The Exit Fee (or portion thereof, as applicable) shall be paid in cash (i) on the date of any prepayment or repayment of DIP Term Loans pursuant to Section 3.04 or otherwise, and (ii) on the Maturity Date. The Exit Fee, when paid, shall be paid to the DIP Agent for the benefit of each DIP Term Lender, ratably based on its Applicable Percentage.

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

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

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the DIP Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the DIP Agent to the account of the DIP Agent from time to time for receipt of payments, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The DIP Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

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

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due to such parties, (ii) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (iii) third, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the DIP Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (B) the provisions of this Section 4.01 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Payments by the Borrower; Presumptions by the DIP Agent. Unless the DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due to the DIP Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the DIP Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or any Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the DIP Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the DIP Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the DIP Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(a), Section 4.02, Section 12.03(c) or otherwise hereunder then the DIP Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) apply any amounts thereafter received by the DIP Agent for the account of such Lender and for the benefit of the DIP Agent or the Issuing Banks to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (b) hold any such amounts in a segregated account as cash collateral for, and application to, any

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future funding obligations of such Lender hereunder, in the case of each of (a) and (b) above, in any order as determined by the DIP Agent in its discretion. If at any time prior to the acceleration or maturity of the Loans, the DIP Agent receives any payment in respect of principal of a Loan while one or more Defaulting Lenders is a party to this Agreement, the DIP Agent shall apply such payment first to the Borrowing(s) for which any such Defaulting Lender has failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, all principal will be applied ratably as provided in Section 10.02(c).

Section 4.04 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) [reserved]; and

(b) the Commitment and the Credit Exposure 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 12.02), *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each adversely affected Lender which affects such Defaulting Lender differently than all other Lenders or all other adversely affected Lenders, as the case may be, shall require the consent of such Defaulting Lender.

ARTICLE V

INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs.

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

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

(ii) subject any Lender or any Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender or any Issuing Bank in respect thereof (except for Indemnified Taxes, Other Taxes covered by Section 5.03 or Connection Income Taxes and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or any Issuing Bank); or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or

Eurodollar Loans made by such Lender or any Letter of Credit; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Issuing Bank of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Sections 5.01(a) or (b) and delivered to the Borrower (with a copy to the DIP Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or such Issuing Bank pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 365 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; *provided, further*, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 365-day period referred to above shall be extended to include the period of retroactive effect thereof.

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Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower (with a copy to the DIP Agent) and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.03(a)), the DIP Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by the Borrower.** Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by the Borrower.** The Borrower shall indemnify the DIP Agent, each Lender and each Issuing Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable

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or paid by the DIP Agent, such Lender or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03 delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the DIP Agent), or by the DIP Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the DIP Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the DIP Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(d)(ii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the DIP Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any other source against any amount due to the DIP Agent under this paragraph (d).

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

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under this Agreement or any other Loan Document shall deliver to the Withholding Agent (with a copy to the DIP Agent), at the time or times prescribed by applicable law or reasonably requested by the Withholding Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A) and 5.03(f)(ii)(B) and Section 5.03(g) below) shall not be required if in the Lender's reasonable judgment such

completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a “United States person” as defined in section 7701(a)(30) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent, but only if such Foreign Lender is legally entitled to do so), 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 establishing an exemption from or reduction of, United States federal withholding tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal withholding tax pursuant to the “business profits” or “other income” article of such tax treaty;

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

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

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(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, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-4 on behalf of each such direct and indirect partner; and

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

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

(g) Treatment of Certain Refunds. If the DIP Agent, a Lender or an Issuing Bank determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the DIP Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the DIP Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the DIP Agent, such Lender or such Issuing Bank in the event the DIP Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This Section 5.03 shall not be construed to require the DIP Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

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(h) FATCA. If a payment made to a Lender under this Agreement would be subject to United States federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, the Borrower and the DIP Agent shall treat (and the DIP Agent is authorized to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 5.04 Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the DIP 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 12.04(b)), 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 (i) the Borrower shall have paid to the DIP Agent the process and recording fee specified in Section 12.04(b)(iv), (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Credit Exposure, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04(c) or Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or

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payments thereafter, and (iv) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the DIP Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (without giving effect to clause (c) of the definition of Alternative Base Rate) (and, if such Lender so requests by notice to the Borrower and the DIP Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI CONDITIONS PRECEDENT

Section 6.01 Effective Date. The obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder (exclusive of the Prepetition Letters of Credit) shall not become effective until the Business Day on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Petition Date will have occurred, and each Loan Party will be a debtor and a debtor-in-possession in the Chapter 11 Cases. All "first day orders" entered by the Bankruptcy Court in connection with the commencement of the Chapter 11 Cases (other than the Cash Management Order or the Interim DIP Order), will be satisfactory in form and substance to the Required Lenders;

(b) Not later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order, in form and substance satisfactory to the Required Lenders, which Interim DIP Order shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed;

(c) All fees, costs and expenses required to be have been paid or reimbursed, as set forth herein and in the Loans Documents, the Fee Letter and the Agency Fee Letter shall have been paid or reimbursed or will be paid or reimbursed contemporaneously with the Effective Date;

(d) The Required Lenders and the DIP Agent shall have received and the Required Lenders shall be satisfied with a cash flow forecast for the 13-week period commencing on the Effective Date dated as of a date not more than 2 Business Days prior to the Effective Date (the "**Initial Approved Budget**");

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(e) One or more orders, in form and substance satisfactory to the Required Lenders in all respects, approving such cash management systems and arrangements (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the “**Cash Management Order**”) (it being understood and agreed that (i) an order substantially in a form approved by Lender Counsel shall, if entered by the Bankruptcy Court, be deemed acceptable to the Required Lenders and (ii) for the avoidance of doubt, the Borrower’s cash management systems and arrangements in effect on the Effective Date in accordance with the Prepetition Revolving Credit Agreement shall be deemed acceptable to the Required Lenders) shall have been entered by the Bankruptcy Court, which Cash Management Order shall be in full force and effect and shall not have been (x) stayed, vacated or reversed, or (y) amended or modified except as otherwise agreed to in writing by Lender Counsel or Required Lenders in their sole discretion;

(f) Since December 31, 2018, there shall not have occurred or there shall not exist any event, condition or circumstance that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(g) The DIP Agent and the Required Lenders shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party setting forth (i) resolutions of its board of directors (or its equivalent) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) the officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the Transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the Organization Documents of such Loan Party, certified as being true and complete. The DIP Agent and the Lenders may conclusively rely on such certificate until the DIP Agent receives notice in writing from such Loan Party to the contrary.

(h) The DIP Agent and the Required Lenders shall have received certificates of the appropriate state agencies with respect to the existence, qualification and good standing of each Loan Party in its state of formation.

(i) The DIP Agent and the Required Lenders shall have received a customary closing certificate substantially in the form of Exhibit D-1, duly and properly executed by a Financial Officer and dated as of the Effective Date.

(j) The DIP Agent and the Required Lenders shall have received counterparts of this Agreement, the Guaranty and Collateral Agreement and the Agency Fee Letter, signed on behalf of each party thereto.

(k) The DIP Agent and the Required Lenders shall have received the Financial Statements.

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(l) The DIP Agent and the Required Lenders shall have received from each party thereto duly executed counterparts of the Security Instruments. In connection with the execution and delivery of the Security Instruments, the Required Lenders shall:

(i) be satisfied that the Interim DIP Order or Security Instruments required to be executed on the Effective Date create (or will create, upon proper filing, recording or registration thereof, or upon entry of, the Interim DIP Order) perfected Liens having the priorities set forth in the Interim DIP Order (subject only to Excepted Liens on all of the tangible and intangible Property of the Loan Parties other than *de minimis* Property excluded in the DIP Agent's sole discretion); and

(ii) have received (or its bailee pursuant to the Interim DIP Order has received) certificates (if any), together with undated, blank stock powers for each such certificate, representing all of the issued and outstanding Equity Interests of each of the Loan Parties (other than the Borrower), to the extent certificated.

(iii) The DIP Agent shall have received an opinion of Davis Polk & Wardwell LLP, special counsel to the Borrower in form and substance satisfactory to the DIP Agent, the Required Lenders and their counsel.

(m) [Reserved].

(n) The DIP Agent and the Required Lenders shall have received appropriate UCC search results satisfactory to DIP Lenders or the Required Lenders reflecting no prior Liens encumbering the Properties of the Borrower and the Subsidiaries; other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(o) Subject to Section 8.20, each document (including any Uniform Commercial Code financing statement) required by this Agreement or under law or reasonably requested by the DIP Agent or the Required Lenders to be filed, registered or recorded in order to create in favor of the DIP Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein having the priorities set forth in the DIP Orders, shall be in proper form for filing, registration or recordation.

(p) The DIP Agent and the Lenders shall have received from the Loan Parties, to the extent requested by the Lenders or the DIP Agent, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(q) The DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the DIP Agent shall have

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received notice from such Lender prior to the Effective Date specifying its objection thereto. At the request of the Required Lenders, the DIP Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) at or prior to 5:00 p.m., New York City time, on [●] (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 6.02 Each Subsequent Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, extend the Scheduled Maturity Date in accordance with the definition thereof or withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, and each Issuing Bank to issue, amend, renew or extend any Letter of Credit, in each case, after the Effective Date, is subject to the satisfaction of the following conditions:

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

(b) The representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representations and warranties are qualified by materiality, such representations and warranties shall continue to be true and correct in all respects.

(c) In the case of an issuance, amendment, renewal or extension of a Letter of Credit or the withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, the applicable Issuing Bank and the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03, a Letter of Credit Withdrawal Notice in accordance with Section 2.07(j) or a request for a Letter of Credit and related Letter of Credit Agreement in accordance with Section 2.07(b), as applicable.

(d) Solely with respect to the Delayed Draw DIP Term Loan, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance reasonably satisfactory to the Required Lenders and the DIP Agent shall have received a signed copy of such Final Order, which Final DIP Order has not been vacated, reversed, modified, amended or stayed; *provided*, for the avoidance of doubt, no Lender holding Delayed Draw DIP Term Commitments shall be required to fund any Delayed Draw DIP Term Loans to the extent that the Final DIP Order does

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not approve the Roll-Up that is to be consummated on the Delayed Draw DIP Funding Date pursuant to Section 2.01(d).

(e) The Final DIP Order shall have been entered by the Bankruptcy Court no later than noon (12:00 p.m.) Eastern Time on the initial Delayed Draw DIP Funding Date.

(f) In the case of a Borrowing of Delayed Draw DIP Term Loans, the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit and each acceptance of the foregoing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 6.02(a) and (b).

ARTICLE VII REPRESENTATIONS AND WARRANTIES

The Borrower (on behalf of itself and its Subsidiaries), and each Guarantor by its execution of the Guaranty and Collateral Agreement, represents and warrants to the DIP Agent, any Issuing Banks and the Lenders that:

Section 7.01 Organization; Powers. Each of the Borrower and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which a Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, as applicable, enforceable in accordance with its terms, except as may be limited by the DIP Orders.

Section 7.03 Approvals; No Conflicts. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing

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of the Security Instruments as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect or do not have an adverse effect on the enforceability of the Loan Documents, (b) will not violate (i) any applicable law or regulation, (ii) any Organization Documents of the Borrower or any Subsidiary, or (iii) any order of any Governmental Authority, (c) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any indenture or other agreement regarding Indebtedness of the Borrower or any Subsidiary or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, (d) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any other agreement or other instrument binding upon the Borrower or any Subsidiary, or its Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, other than such violations or defaults which would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect, or do not have an adverse effect on the enforceability of any Loan Documents, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04 Financial Condition; No Material Adverse Change.

(a) All financial statements relating to any Loan Party which have been or may hereafter be delivered by any Loan Party to the DIP Agent and the Lenders pursuant to the terms of the Agreement have been prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods. The representations in this Section 7.04(a), as applicable, are subject, in the case of unaudited financial statements, to normal year-end audit adjustments and accruals and the absence of notes.

(b) Since December 31, 2018, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Indebtedness (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Financial Statements.

(d) A true and complete copy of the Initial Approved Budget, as agreed to by the Required Lenders, as of the Effective Date, is attached as Annex IV hereto.

(e) Each Proposed Budget and any other projections regarding the financial performance of the Borrower and its Consolidated Subsidiaries which have been or may hereafter be delivered to DIP Agent and the Lenders have been prepared on a reasonable basis

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and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided (and on the Effective Date in the case of forecasts provided prior to the Effective Date) and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that neither the Borrower nor any Subsidiary makes any representation that such projections will be realized). [No facts exist that, individually or in the aggregate, would result in any material change in the Approved Budget (subject to Permitted Variances).]

Section 7.05 Litigation. Other than the Chapter 11 Cases, there are no unstayed actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Subsidiary, or any of their Properties (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (b) that involve any Loan Document or the Transactions.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

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

(b) the Borrower and the Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Borrower or the Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary contain or have contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to

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CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

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

(f) neither the Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation, and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Borrower has provided, or has caused its Subsidiaries to provide, to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or the Subsidiaries' possession or control and relating to their respective Properties or operations thereon.

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

(a) Each of the Borrower and each Subsidiary is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than as result of the commencement of the Chapter 11 Cases, neither the Borrower nor any Subsidiary is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or a Subsidiary to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any

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Material Indebtedness is outstanding or by which the Borrower or any Subsidiary or any of their Properties is bound, except where enforcement is stayed upon commencement of the Chapter 11 Cases.

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Borrower nor any Subsidiary is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Except as set forth on Schedule 7.09, each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed. Each of the Borrower and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes for which payment is stayed or excused under the Bankruptcy Code or that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No currently outstanding Tax Lien has been filed against the Borrower, any of the Subsidiaries, or any of their respective Properties, and, to the knowledge of the Borrower, no claim is being asserted against the Borrower, any of the Subsidiaries, or any of their respective Properties with respect to any such Tax or other such governmental charge in each case, except with respect to Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 7.10 ERISA.

(a) The Borrower, the Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code, except where the failure to so establish and maintain such Plan could not reasonably be expected to have a Material Adverse Effect.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts which the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former

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employees of such entities, with respect to which its sponsorship of, maintenance of or contribution to may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11 Disclosure; No Material Misstatements. The Borrower has disclosed to the DIP Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the DIP Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such projected financial information was made available and such projections reflect the good faith and reasonable estimates of the Borrower of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein, it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information.

Section 7.12 Insurance. Each Loan Party has, and has caused all of its Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements, including, without limitation, Flood Insurance, if required, with respect to any Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the DIP Orders and/or Security Instruments, and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and of comparable size and engaged in the same or a similar business for the assets and operations of the Borrower and its Subsidiaries. Subject to Section 8.20, the DIP Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies, and the DIP Agent has been named as loss payee with respect to Property loss insurance.

Section 7.13 Restriction on Liens. Neither the Borrower nor any of the Subsidiaries is a party to any material agreement or arrangement (other than (a) the "Loan Documents" under and as defined in the Prepetition Term Loan Agreement and the "Loan Documents" under and as

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defined in the Prepetition Revolving Loan Agreement, (b) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (c) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (d) documents creating Liens which are described in clauses (g) or (h) of the definition of “Excepted Liens”, but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h), (e) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any Subsidiary pending the consummation of such sale, (f) [reserved], (g) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (h) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein)), or subject to any order, judgment, writ or decree (other than the DIP Orders), which either restricts or purports to restrict its ability to grant Liens to the DIP Agent for the benefit of the Secured Parties on or in respect of its Properties to secure the Secured Obligations and the Loan Documents.

Section 7.14 Subsidiaries. Except as set forth on Schedule 7.14, the Borrower has no Subsidiaries. Each Person on Schedule 7.14 is a Wholly-Owned Subsidiary. The Borrower has no Foreign Subsidiaries. All of the outstanding Equity Interests of each Subsidiary has been validly issued, is fully paid, is nonassessable and has not been issued in violation of any preemptive or similar rights. Schedule 7.14 also sets forth the holders (and percentages of ownership) of the Equity Interests in each of the Subsidiaries as of the Effective Date.

Section 7.15 Location of Business and Offices. The Borrower’s jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is Southcross Energy Partners, L.P.; and the organizational identification number of the Borrower in its jurisdiction of organization is 5138791 (or, in each case, as set forth in a notice delivered to the DIP Agent pursuant to Section 8.01(j) in accordance with Section 12.01). The Borrower’s principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(j) and Section 12.01(c)).

Section 7.16 Properties; Titles, Etc.

(a) Each of the Borrower and the Subsidiaries has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its real and personal Property except for defects that, individually or in the aggregate, (i) do not materially interfere with the ordinary conduct of its business and (ii) could not reasonably be expected to have a Material Adverse Effect. All such Property is free and clear of all Liens except Liens permitted by Section 9.03.

(b) All leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full

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force and effect, and, other than the commencement of the Chapter 11 Cases, there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any material lease or leases, the enforcement of which has not been stayed.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been conducted prior to the date hereof (subject to any changes to the business resulting from transactions permitted hereunder).

(d) The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property rights (“**Intellectual Property**”) material to its business, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and such Subsidiary does not infringe upon the rights of any other Person in any material respect.

Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the offices, plants, gas processing plants, platforms, pipelines, improvements, fixtures, equipment, and other Property owned, leased or used by the Borrower and its Subsidiaries in the conduct of their businesses are (a) being maintained in a state adequate to conduct normal operations, (b) structurally sound with no known defects, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair, (e) sufficient for the operation of the businesses of the Borrower and its Subsidiaries as currently conducted, and (f) in conformity with all Governmental Requirements relating thereto.

Section 7.18 Hedging Agreements. Schedule 7.18, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to Section 8.01(e), sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

Section 7.19 Security Instruments. The Interim DIP Order and/or the Final DIP Order are effective to create, in favor of the DIP Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and perfected security interest in, all of the Collateral described in the Interim DIP Order and/or Final DIP Order. Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect such Liens and security interests, and upon entry by the Bankruptcy Court, the Liens and security interests created by the Interim DIP Order and/or the Final DIP Order shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby, in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Pursuant to and to the extent provided in the Interim DIP Order and/or the Final DIP Order, the Secured Obligations of the Loan Parties hereunder

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will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all superpriority administrative expense claims granted to any other Person, subject only to the Carve-Out.

Section 7.20 Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used for the purposes specified in Section 8.22. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used for any purpose which violates the provisions of (a) Regulations T, U or X or any other regulation of the Board, (b) any Sanctions, or (c) the FCPA.

Section 7.21 [Reserved.]

Section 7.22 Common Enterprise. Each of the Borrower and its Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrower and its Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

Section 7.23 Material Contracts. Schedule 7.23 hereto contains a complete list, as of the Effective Date, of all Material Contracts of the Borrower and each Subsidiary, including all amendments thereto. All Material Contracts are in full force and effect, neither the Borrower nor any Subsidiary is in default under any Material Contract other than as result of the commencement of the Chapter 11 Cases, and to the knowledge of the Borrower and each Subsidiary after due inquiry, no other Person that is party thereto is in default under any Material Contract, except for such defaults as could not be reasonably expected to have a Material Adverse Effect or where enforcement is stayed upon commencement of the Chapter 11 Cases. None of the Material Contracts prohibits the transactions contemplated under the Loan Documents. Each of the Material Contracts is currently in the name of, or has been assigned to, a Loan Party (with the consent or acceptance of each other party thereto if and to the extent that such consent or acceptance is required thereunder), each of the Material Contracts is assignable to the DIP Agent as collateral, and each of the Material Contracts is assignable, unless waived by the DIP Agent in its reasonable discretion, by the DIP Agent to a reasonably acceptable transferee if an Event of Default were to occur. The Borrower and its Subsidiaries have delivered to the DIP Agent a complete and current copy of each of their Material Contracts existing on the Effective Date.

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Section 7.24 Broker's Fees. Except as set forth in Schedule 7.24, no broker's or finder's fee, commission or similar compensation will be payable by the Borrower or any Subsidiary with respect to the Transactions.

Section 7.25 Employee Matters. As of the Effective Date, (a) neither the Borrower nor any Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower or any Subsidiary after due inquiry, threatened between the Borrower or any Subsidiary and its respective employees.

Section 7.26 Anti-Terrorism Laws.

(a) The Borrower is not, and to the knowledge of the Borrower, none of the Borrower's Affiliates, officers or directors is in violation of any Governmental Requirement relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), the USA Patriot Act, and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., in each case, as amended from time to time.

(b) The Borrower is not, and to the knowledge of the Borrower, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the

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Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) (i) Neither the Borrower nor any of its subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries, is currently, or is owned or controlled by Persons that are currently (A) the subject of any material United States sanctions administered or enforced by OFAC or the United States Department of State (collectively, “**Sanctions**”) or (B) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, and (ii) the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the subject of Sanctions.

Section 7.27 Foreign Corrupt Practices. No Loan Party, and, to the knowledge of the Borrower, no director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Loan Parties and, to the knowledge of the Borrower, their Affiliates have conducted their business in material compliance with the FCPA.

Section 7.28 DIP Orders. The Loan Parties are in compliance with the terms and conditions of the DIP Orders.

ARTICLE VIII AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement, covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 8.01 Financial Statements; Ratings Change; Other Information. The Borrower will furnish to the DIP Agent for, except as otherwise set forth below, delivery to each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than ninety (90) days after the end of the fiscal year, its audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit other than a “going concern” qualification) to the effect

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that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event not later than forty-five (45) days after the end of the fiscal quarter, commencing with the fiscal quarter ending March 31, 2019, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved].

(d) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements required pursuant to Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit D hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) stating whether any change in GAAP or in the application thereof has occurred since December 31, 2018 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(e) Certificate of Financial Officer – Hedging Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), a certificate of a Financial Officer, in substantially the form of Schedule 7.18, setting forth as of the last Business Day of such fiscal quarter or fiscal year, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) [reserved].

(g) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by the Borrower or any such Subsidiary, or the board of directors (or comparable governing body) of the Borrower or any such Subsidiary, to such letter or report.

(h) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or with any national or foreign

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securities exchange, or required by applicable law to be distributed by the Borrower to its equityholders generally, as the case may be.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any order of the Bankruptcy Court or any Material Indebtedness, other than the Loan Documents, and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Information Regarding Loan Parties. Promptly (and in any event within ten (10) Business Days (or such later time as the DIP Agent may agree) written notice of any change (i) any Loan Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in any Loan Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Loan Party's federal taxpayer identification number.

(k) Notices of Certain Changes. Except in connection with Organization Documents of the Borrower and its Subsidiaries that are delivered pursuant to Section 6.01(h), promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation, certificate or articles of formation or organization, any preferred stock designation or any other public organic document of the Borrower or any Subsidiary.

(l) [reserved].

(m) [reserved].

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, liquidity, business plan, contract negotiations, financial condition and projections of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones, or compliance with the terms of this Agreement or any other Loan Document, as the DIP Agent or any Lender may reasonably request.

(o) Monthly Financial Statements. As soon as available but in any event within thirty-five (35) calendar days after the end of each calendar month, solely with respect to the first two calendar months of each fiscal quarter, its unaudited consolidated balance sheet and related statements of income or operations and cash flows reflecting results of operations as of the end of and for such calendar month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods (or in the case of the balance sheet, as of the end) of the previous fiscal year, all in form satisfactory to the DIP Agent or the Lender Financial Advisor and certified by one of its Financial Officers as

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presenting fairly in all material respects the financial condition and the results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal quarter-end or year-end adjustments, as the case may be, and the absence of footnotes. Concurrently with any delivery of financial statements required pursuant to this Section 8.01(o), the Borrower will furnish to the DIP Agent and each Lender a certificate of a Financial Officer in substantially the form of Exhibit D-3 hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto. It is understood that the materials provided to the DIP Agent and the Lenders pursuant to this clause (o), in accordance with the last sentence of this Section 8.01, will not be identified by the Borrower as “Public” information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated “Public Side Information”.

(p) Ratings Updates. Any reports, information, documentation or other evidence required by and in accordance with Section 8.16.

(q) Budget Updates and Variance Reports.

(i) To the DIP Agent and the financial advisors to the Lenders, as soon as available, but in any event not later than May 1, 2019, and on the Wednesday (or next preceding Business Day if such Wednesday is not a Business Day) of every fourth week thereafter, proposed updated 13-week cash flow forecast (the “Proposed Budget”), containing items of sufficient detail with respect to the Loan Parties for the immediately succeeding consecutive 13 weeks, in the form of the Initial Approved Budget, and otherwise in form and substance acceptable to financial advisors to Lenders, acting at the direction of the Required Lenders, setting forth all anticipated sources and uses of cash and beginning and ending cash balances for such 13-week period, together with a certificate of a Responsible Officer of the Borrower stating that such 13-week cash flow forecast has been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ substantially from the projected results). To the extent such Proposed Budget is approved by financial advisors to the Lenders, acting at the direction of the Required Lenders, such Proposed Budget shall thereafter be the “Approved Budget” for such period contained therein and for all purposes hereunder and under the DIP Orders. No such Proposed Budget shall become an Approved Budget until so approved; *provided* that if such financial advisors have not objected to such forecast within five (5) Business Days after delivery thereof, such Proposed Budget shall be deemed to be acceptable to and approved by the financial advisors to the Lenders acting at the direction of the Required Lenders. Approval of any Proposed

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Budget shall be evidenced by a writing delivered (which may be through electronic transmission) by the financial advisors to the Lenders acting at the direction of the Required Lenders (which may be made by their agent (including the DIP Agent) or its or their counsel or financial advisors) or by the Borrower in the case of deemed approvals. In the event that any Proposed Budget is not so approved, the last Approved Budget without giving effect to any update, modification or supplement shall remain in effect.

(ii) To the DIP Agent and the financial advisors to the Lenders, on the Wednesday of each calendar week or next preceding Business Day if such Wednesday is not a Business Day (each such delivery date, a “**Variance Testing Date**”), a variance report (each, a “**Variance Report**”), in form and detail reasonably satisfactory to the Required Lenders, reconciling the Approved Budget to the actual sources and uses of cash for (i) the immediately preceding full calendar week (ending on a Saturday) and (ii) the Testing Period, (A) showing, for such periods, actual results for the following items: (1) cash receipts, (2) cash disbursements, (3) net cash flow, (4) professional fees, (5) capital expenditures and (6) billings, (B) noting a line-by-line reconciliation of variances from values set forth for such periods in the relevant Approved Budget and (C) providing an explanation for all material variances, certified by a Responsible Officer of the Borrower. Each Variance Report delivered pursuant to this Section 8.01(q) shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent or the Lender Financial Advisor.

(r) Real Property Report. Concurrently with the delivery of the financial statements under Section 8.01(b), but in any event not later than 45 days after the end of each fiscal quarter, (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders) not to exceed 15 days), a certificate of a Financial Officer setting forth as of the last Business Day of such fiscal quarter, title information in form and substance acceptable to the DIP Agent (acting at the direction of the Required Lenders) with respect to any real Property acquired by the Borrower and its Subsidiaries during such fiscal quarter for consideration in excess of \$1,000,000, individually or in the aggregate.

Information required to be delivered pursuant to Section 8.01(a), (b) or (n) shall be deemed to have been delivered if such information is available on the website of the SEC and the Borrower has delivered notice to the DIP Agent that such reports are so available, which notice may be provided in any certificate delivered pursuant to Section 8.01(d).

The Borrower hereby acknowledges that (a) the DIP Agent may, but shall not be obligated to, make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to the General Partner or the Loan Parties, 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. The Borrower hereby agrees that so long as the Borrower is the issuer of any

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outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the DIP Agent, the Issuing Banks 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 the Borrower 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 12.11); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the DIP Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the following Borrower Materials shall be deemed “PUBLIC,” unless the Borrower notifies the DIP Agent promptly that any such document contains material non-public information: (1) the Loan Documents and (2) notification of changes in the terms of the Credit Facility.

Section 8.02 Notices of Material Events. The Borrower will furnish to the DIP Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000;
- (d) any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles; and
- (e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04 Payment of Tax Obligations. The Borrower will, and will cause each Subsidiary to, pay its Tax liabilities constituting postpetition obligations that constitute administrative expenses in the Chapter 11 Cases under the Bankruptcy Code or otherwise ordered by the Bankruptcy Court, before the same shall become delinquent or in default; *provided*, that the obligations hereunder are subject to the provisions of the Bankruptcy Code and any required approvals by an applicable order of the Bankruptcy Court.

Section 8.05 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the reading, tenor and effect thereof, and the Borrower will, and will cause each Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at or within the time or times and in the manner specified.

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

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) preserve, maintain and keep in good repair, condition, working order and efficiency (ordinary wear and tear excepted) all of its Properties, including, without limitation, all equipment, machinery and facilities, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and

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(d) to the extent the Borrower is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator of such Property to comply with this Section 8.06 in accordance with customary industry practices.

Section 8.07 Insurance. Subject to Section 8.20, the Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (i) in such amounts and against such risks as are customarily maintained by companies of similar size engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance), and (ii) in accordance with all Governmental Requirements, including, without limitation, Flood Insurance, if required. Subject to Section 8.20, insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to the DIP Agent (on behalf of the Lenders) as its interests may appear, and such policies shall name the DIP Agent as an “additional insured” (in the case of liability insurance) or “lender’s loss payable” (in the case of property insurance) on behalf of the Lenders, and provide that the insurer will give at least thirty (30) days’ prior notice of any cancellation to the DIP Agent. Each of the parties hereto acknowledges and agrees that any increase, extension or renewal of any of the Commitments or Loans (other than as contemplated in the definition of “Scheduled Maturity Date”) or the making of any new, additional or incremental facilities shall be subject to (and conditioned upon) the prior delivery to the DIP Agent of all Flood Zone Documentation.

Section 8.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Subsidiary to maintain financial records in accordance with GAAP. The Borrower will, and will cause each Subsidiary to, permit any representatives designated by the DIP Agent or any Lender, upon reasonable prior notice and during normal business hours (unless an Exigent Circumstance or an Event of Default then exists), at the Loan Parties’ expense, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its Responsible Officers and independent accountants, all at such reasonable times (unless an Exigent Circumstance or Event of Default then exists) and as often as reasonably requested (*provided* that the DIP Agent shall give the Borrower reasonable advance notice of any proposed discussion with such accountants (unless an Exigent Circumstance or an Event of Default then exists) and permit the Borrower and its representatives to be present during such discussions).

Section 8.09 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Agreements. The Borrower will, and will cause each Subsidiary to, comply with all agreements, contracts and instruments binding on it or affecting its Properties or business, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 8.11 Environmental Matters.

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(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and shall cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except in compliance with applicable Environmental Laws, if the Release or threatened Release could reasonably be expected to have a Material Adverse Effect; (iii) timely obtain, file or prepare, and shall cause each Subsidiary to timely obtain, file or prepare, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Subsidiaries' Properties, except where such failure to obtain or file could not reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and shall cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the **"Remedial Work"**) in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, if failure to commence and diligently prosecute to completion could reasonably be expected to have a Material Adverse Effect; (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for material damages or compensation; and (vi) establish and implement, and shall cause each Subsidiary to establish and implement, such procedures as may be necessary to continuously determine and assure that the Borrower's and its Subsidiaries' obligations under this Section 8.11(a) are timely and fully satisfied, which failure to establish and implement such procedures could reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will, and will cause each Subsidiary to, provide existing Phase I site assessments, to the extent they are available, upon request by the DIP Agent or the Lenders, in connection with any future acquisitions of Properties; *provided* that for the avoidance of doubt, there shall be no obligation under this Section for the Borrower to obtain such assessments.

Section 8.12 Further Assurances.

(a) The Borrower at its sole expense will, and will cause each Subsidiary to, promptly execute and deliver to the DIP Agent all such other documents, agreements and instruments reasonably requested by the DIP Agent or the Required Lenders to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created

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pursuant to this Agreement, the Interim DIP Order or the Final DIP Order or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the sole discretion of the DIP Agent, in connection therewith.

(b) Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect the Liens and security interests created pursuant to this Agreement, the DIP Orders or any other Security Instrument. Upon entry by the Bankruptcy Court, the Liens and security interests created by the DIP Orders shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby (including after-acquired Collateral), in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Notwithstanding the foregoing, upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions requested, with respect to any Material Real Property and any other tangible and intangible personal Property of the Borrower or any Loan Party, in each case constituting Collateral, to cause such Material Real Property and Collateral to be subject to a Lien pursuant to the Security Instruments or the DIP Order or to evidence the Lien on such Property, including to execute and deliver such Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the DIP Agent or the Required Lenders, and take such actions necessary or advisable to subject such Property to a Lien or evidence of the Lien on such Property pursuant to the Security Instruments.

(c) Upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions required, if any, to cause all of its right, title and interest in each Hedging Agreement to which it is a party to be collaterally assigned to the DIP Agent, for the benefit of the Secured Parties, and shall, if requested by the DIP Agent or the Required Lenders, use its commercially reasonable efforts to cause each such agreement or contract to (i) expressly permit such assignment and (ii) upon the occurrence of any default or event of default under such agreement or contract, (A) to permit the Lenders to cure such default or event of default and assume the obligations of such Loan Party under such agreement or contract and (B) to prohibit the termination of such agreement or contract by the counterparty thereto if the Lenders assume the obligations of such Loan Party under such agreement or contract and the Lenders take the actions required under the foregoing clause (A).

Section 8.13 Title Information. If the Borrower or any Subsidiary acquires any new pipeline and processing Properties for consideration in excess of \$5,000,000, individually or in the aggregate, the Borrower shall, or shall cause such Subsidiary to, provide promptly (and in any event within 30 days (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders))), title information regarding such new pipeline and processing Properties to the DIP Agent. The Borrower shall, within sixty (60) days of notice from the DIP Agent (or such later date as the DIP Agent may agree in its sole discretion) that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03 raised by such information to the reasonable satisfaction of the DIP Agent, or (ii) deliver title information in form and substance acceptable to the DIP Agent

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(acting at the direction of the Required Lenders) so that the DIP Agent shall have received, together with title information previously delivered to the DIP Agent, title information reasonably satisfactory to the DIP Agent relative to the pipeline and processing Properties of the Borrower and its Subsidiaries.

Section 8.14 [Reserved].

Section 8.15 [Reserved].

Section 8.16 Ratings. The Borrower shall use commercially reasonable efforts to obtain a rating for the Credit Facility from both S&P and Moody's on or prior to the hearing to consider approval of the Final DIP Order; *provided* that if the Borrower is unable to obtain both ratings for the Credit Facility on or prior to such date, the Borrower shall (i) thereafter use its commercially reasonable efforts to obtain both ratings for the Credit Facility as soon as possible, and (ii) promptly provide to the DIP Agent any other information, documentation or other evidence reasonably requested by the DIP Agent or the Required Lenders in connection with the subject matter of this Section 8.16.

Section 8.17 ERISA Compliance. The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the DIP Agent (a) promptly after the filing thereof by the Borrower or any Subsidiary with the United States Secretary of Labor or the Internal Revenue Service (or if filed by a third party, promptly after the Borrower or a Subsidiary becomes aware of such filing), copies of each annual and other report with respect to each Plan or any trust created thereunder, and (b) promptly upon becoming aware of the occurrence of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, the Subsidiary or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

Section 8.18 [Reserved].

Section 8.19 [Reserved].

Section 8.20 Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, as the case may be, each of the items set forth on Schedule 8.20, in each case on or prior to the date specified in such Schedule for such item or such later date as the DIP Agent may determine and agree to in writing in its sole discretion.

Section 8.21 Use of Proceeds. The Borrower shall use the proceeds from the Loans and the issuance of the Letters of Credit hereunder solely (i) to finance working capital and for general corporate purposes of the Borrower and its Subsidiaries (including to conduct the Section 363 Sale process and including Professional Fees approved by the Bankruptcy Court), to the extent such expenses are of the kind described in and in amounts shown in the Approved Budget (subject to Permitted Variances) and including the Roll-Up of Prepetition Term Loans as provided in Section 2.01(d) and the cash collateralization of the Letters of Credit pursuant to

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Section 2.07(j), (ii) to deem to be cancelled and reissue the Prepetition Letters of Credit as provided in Section 2.07(b), (iii) to pay fees, costs and expenses incurred by the DIP Agent and the Lenders in connection with the Transactions and other fees, costs and expenses of the DIP Agent and the Lenders to the extent reimbursable hereunder, (iv) to make adequate protection payments as permitted or required by the DIP Orders, and (v) to fund the Carve-Out in accordance with the DIP Orders. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of the Loans or the Letters of Credit hereunder be used to pay [Professional Fees] incurred in connection with a Prohibited Purpose (as defined in the DIP Orders). Nothing in this Section 8.22 shall be construed to waive the DIP Agent's or any Lender's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court.

Section 8.22 Lender Calls. Upon request of the DIP Agent at the direction of the Required Lenders, the Borrower shall arrange for conference calls, which call shall occur not more frequently than once per calendar week, discussing and analyzing the Approved Budget (or other 13-week cash flow forecasts furnished pursuant to Section 8.01) for the prior week, the Variance Reports, the financial condition, business operations, liquidity, business plan, contract negotiations and projections of each of the Loan Parties, the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones.

Section 8.23 Case Milestones. Each Loan Party shall ensure that each of the milestones set forth below (the "**Case Milestones**") is achieved in accordance with the applicable timing referred to below (or such later dates as approved in writing by the Required Lenders):

(a) On the Petition Date, the Loan Parties shall have filed a motion seeking approval of the DIP Orders, in form and substance acceptable to the Required Lenders in all respects.

(b) Not later than five (5) Business Days after the Petition Date (or such later date approved in writing by the Required Lenders), the Interim DIP Order shall have been entered by the Bankruptcy Court and such Interim DIP Order shall be in full force and effect and shall not have been (i) vacated, reversed, or stayed, or (ii) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(c) Not later than the date that is forty (40) days following the Petition Date (or such later date approved in writing by the Required Lenders), the Bankruptcy Court shall have entered the Final DIP Order and such Final DIP Order shall be in full force and effect and shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(d) Not later than fifty (50) days after the Petition Date, the Loan Parties shall have received non-binding first-round indications of interest from potential purchasers of all or substantially all of the Loan Parties' assets.

(e) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have not reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue a Section 363 Sale. In connection with a Section 363 Sale, the Loan Parties and the

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Required Lenders shall negotiate in good faith a reasonable wind-down budget (the “**Wind-Down Budget**”) to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties’ estates on a reasonable and appropriate timeline.

(f) If, pursuant to Section 8.23(e), a Section 363 Sale is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed a motion in the Bankruptcy Court in form and substance acceptable to the Required Lenders, seeking approval of (a) a sale (the “**Sale Transaction**”) of substantially all assets of the Loan Parties, and (b) bidding procedures (the “**Bid Procedures**”) and related relief in connection with the Sale Transaction (the “**Bid Procedures and Sale Motion**”).

(ii) Not later than eighty (80) days after the Petition Date, (a) the Loan Parties shall have scheduled a hearing on the Bid Procedures Motion, and (b) the Loan Parties shall have obtained entry of an order, in form and substance acceptable to the Required Lenders (the “**Bid Procedures Order**”), approving the Bid Procedures and setting a date for the hearing to approve the Sale Transaction (the “**Sale Hearing**”).

(iii) Not later than one hundred (100) days after the Petition Date, the Loan Parties shall have established the final deadline to receive qualified bids, and shall have received such qualified bids (the “**Bid Deadline**”).

(iv) Not later than two (2) weeks after the Bid Deadline, the Loan Parties shall have obtained entry of a Final Order by the Bankruptcy Court (the “**Sale Approval Order**”), in form and substance acceptable to the Required Lenders in all respects.

(v) Not later than the earlier of (i) thirty (30) days after entry of the Sale Approval Order and (ii) the Maturity Date, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by payment of such DIP Term Loans and Roll-Up Loans in full, in cash (subject to the Wind-Down Budget).

(g) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue such Acceptable Plan. If pursuant to this Section 8.23(g), an Acceptable Plan is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed in the Bankruptcy Court an Acceptable Plan, a corresponding disclosure statement (the “**Disclosure Statement**”), and a motion seeking approval of the Disclosure Statement, in each case, in form and substance acceptable to the Required Lenders.

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(ii) Not later than ninety five (95) days after the Petition Date, the Loan Parties shall have scheduled a hearing on approval of the Disclosure Statement and obtained entry of the order by the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Required Lenders.

(iii) Not later than one hundred forty five (145) days after the Petition Date, the Loan Parties shall have scheduled a hearing to confirm the Acceptable Plan and obtained entry by the Bankruptcy Court of the order confirming the Acceptable Plan (the “**Confirmation Order**”), in form and substance acceptable to the Required Lenders.

(h) Not later than thirty (30) days after entry of the Confirmation Order, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by (i) payment of such DIP Term Loans and Roll-Up Loans in full, in cash or (ii) such other treatment as acceptable to the Required Lenders.

Section 8.24 Certain Bankruptcy Matters; Case Documents.

(a) The Loan Parties shall, and shall cause each of their Subsidiaries to, comply (i) in all respects, after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) in all respects, after entry thereof, with each order of the type referred to in clause (b) of the definition of “Approved Bankruptcy Court Order”, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (b) of the definition of “Approved Bankruptcy Court Order,” and (iii) in all material respects, after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Loan Parties’ “first day” and “second day” relief obtained in the Chapter 11 Cases, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time with the approval of the DIP Agent and the Required Lenders.

(b) The Borrower shall provide at least five (5) Business Days’ (or such shorter notice acceptable to the Required Lenders in their sole discretion) prior written notice to the DIP Agent or its advisors prior to any assumption or rejection of any Loan Party’s Material Contracts pursuant to Section 365 of the Bankruptcy Code, and no such Material Contract shall be assumed or rejected, if such assumption or rejection adversely impacts the Collateral, any Liens thereon or any superpriority claims payable therefrom (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims).

(c) As soon as practicable in advance of filing with the Bankruptcy Court of any document, motion or pleading relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Credit Facility, the DIP Orders, the Cash Management Order, the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral,

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(v) debtor-in-possession financing, (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, (viii) any Section 363 Sale, or (ix) any transaction outside of the ordinary course of business with any Loan Party, the Loan Parties will deliver to the DIP Agent for delivery to [each Lender] all such documents to be filed and provide the DIP Agent and the Lenders with a reasonable opportunity to review and comment on all such documents.

(d) Promptly following receipt thereof (and in any event within one (1) Business Day after receipt thereof), the Loan Parties shall deliver to the professional advisors to the Lenders copies of all formal proposals, letters of interest, letters of intent, bids, agreements and any final proposed definitive documentation for any sale of all or any material portion of its the Loan Parties' assets or any other investment pursuant to which additional capital is to be received by the Loan Parties.

(e) It is understood that the materials provided to the DIP Agent and the Lenders pursuant to Sections 8.23(b) and (c) will not be identified by the Borrower as "Public" information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated "Public Side Information". It is understood that the materials provided to the DIP Agent and the Lenders' professional advisors pursuant to Section 8.23(d) will be provided solely on a "professional eyes only" basis.

ARTICLE IX NEGATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement) covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 9.01 Budget Variances. As of any Variance Testing Date, the Loan Parties shall not allow the [Total Cash Receipts] or the [Total Cash Disbursements] (in each case, as such terms are used in the applicable Approved Budget) to exceed the aggregate amount forecasted therefor in the Approved Budget for such [Testing Period] by more than the Permitted Variances for the period applicable thereto under Annex III (the "**Permitted Variances**").

Section 9.02 Indebtedness. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations arising under the DIP Orders and the Loan Documents, or with respect to any Bank Products, or any guaranty of or suretyship arrangement for the Secured Obligations arising under the Loan Documents, or with respect to any Bank Products;

(b) Indebtedness under Capital Leases or that constitutes Purchase Money Indebtedness; *provided* that the aggregate amount of all Indebtedness described in this Section 9.02(b) at any one time outstanding shall not to exceed \$[500,000] in the aggregate;

(c) Indebtedness associated with performance bonds, bid bonds, surety bonds, appeal bonds or customs bonds required in the ordinary course of business or in connection with

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the enforcement of rights or claims of the Borrower or any Subsidiary or in connection with judgments that do not result in a Default;

(d) unsecured intercompany Indebtedness between the Borrower and any Subsidiary or between Subsidiaries to the extent permitted by Section 9.05(g); *provided* that such Indebtedness is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Wholly-Owned Subsidiaries, and, *provided, further*, that any such Indebtedness owed by a Loan Party shall be subordinated to the Secured Obligations on terms set forth in the Guaranty and Collateral Agreement;

(e) Indebtedness constituting a guaranty by any Loan Party of Indebtedness permitted to be incurred by any other Loan Party under this Section 9.02; *provided* that if the Indebtedness being guaranteed is subordinated to the Secured Obligations, such guaranty shall be subordinated to the Guarantee of the Secured Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such guaranteed Indebtedness;

(f) endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or as otherwise approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order, so long as such Indebtedness shall not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the underlying policy;

(h) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft, payment order or other debit drawn, presented or issued against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence or (ii) arising under any Bank Products provided by a bank or other financial institution to the Loan Parties in the ordinary course of business and pursuant to, or in accordance with, the Cash Management Order;

(i) other unsecured Indebtedness not to exceed [\$1,000,000] in the aggregate at any one time outstanding;

(j) Indebtedness outstanding on the Effective Date consisting of Prepetition Term Loans incurred under the Prepetition Term Loan Facility and Prepetition Revolving Loans incurred under the Prepetition Revolving Loan Facility;

(k) Indebtedness outstanding on the Effective Date that is disclosed to the Lenders in Schedule 9.02.

Section 9.03 Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Secured Obligations pursuant to the DIP Orders and other Security Instruments;

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(b) Excepted Liens;

(c) Liens securing Capital Leases and Purchase Money Indebtedness permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Indebtedness, as applicable;

(d) Liens on proceeds of Letters of Credit permitted to be posted in connection with Hedging Agreements permitted by Section 9.17;

(e) (i) pledges and deposits of cash in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person and (ii) Liens on proceeds of insurance policies securing Indebtedness permitted under Section 9.02(g);

(f) Liens on cash earnest money or escrowed deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 9.05, to be applied against the purchase price for and indemnities with respect to such Investment, solely to the extent such Investment would have been permitted on the date of the creation of such Lien;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(h) Liens on Collateral securing Indebtedness permitted by Section 9.02(i), including adequate protection Liens granted pursuant to the DIP Orders, which Liens, in each case, shall rank the same priorities as set forth in the DIP Orders;

(i) other Liens securing obligations arising in the ordinary course of business, other than Indebtedness for borrowed money, outstanding in an aggregate amount not to exceed [\$1,000,000];

(j) Liens in the form of cash collateral (withdrawn from the Letter of Credit Account pursuant to a Letter of Credit Withdrawal Notice) securing obligations owed to suppliers and vendors in an aggregate amount not to exceed the Alternate Cash Collateral Amount; *provided* that the Borrower shall use commercially reasonable efforts to ensure that such cash collateral will continue to secure the Secured Obligations (other than reimbursement obligations under Letters of Credit) on a junior basis under arrangements (including security documentation and cash management) that are acceptable to the DIP Agent and the Required Lenders (it being understood and agreed that in any event the Loan Parties' interests in such cash collateral, including the residual value of such cash collateral or the remaining interests of the Loan Parties therein will continue to constitute Collateral that secures the Secured Obligations); and

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(k) Liens outstanding as of the Effective Date that are disclosed to the Lenders in Schedule 9.03.

Section 9.04 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its stockholders or make any distribution of its Property to its Equity Interest holders, except Subsidiaries may declare and pay dividends to the Loan Parties.

Section 9.05 Investments, Loans and Advances. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding, or enter into any agreement to make, any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) Investments as of the Effective Date that are disclosed to the Lenders in Schedule 9.05;

(b) accounts receivable arising in the ordinary course of business consistent with past practice;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof rated in one of the two highest grades by S&P or Moody's;

(e) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing exclusively in Investments described in Section 9.05(c), Section 9.05(d) or Section 9.05(e);

(g) Investments (i) made by the Borrower in or to the Guarantors, and (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Borrower or any Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Subsidiaries; *provided* that the Borrower shall give the DIP Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this Section 9.05(h) exceeds \$[100,000];

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- (i) Investments constituting Indebtedness permitted under Section 9.02;
- (j) credit provided to new or existing customers of the Loan Parties for the costs and expenses of extending service to such customers and for which such customers are contractually obligated to reimburse the Loan Party providing such credit in the ordinary course of business;
- (k) Investments in Hedging Agreements permitted by Section 9.17;
- (l) Investments consisting of the [licensing or contribution] of Intellectual Property in the ordinary course of business; and
- (m) other Investments not to exceed [\$] in the aggregate at any time.

Section 9.06 Nature of Business: International Operations. The Borrower will not, and will not permit any Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Petition Date. From and after the date hereof, the Borrower and its Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any real Property not located within the geographical boundaries of the United States.

Section 9.07 Proceeds of Loans. The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 8.21. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board, in each case as now in effect or as the same may hereinafter be in effect.

Section 9.08 ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time:

- (a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code;
- (b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto;
- (c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that contributions to or the obligation to contribute to may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3)

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of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code; and

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to the Borrower or a Subsidiary or with respect to any ERISA Affiliate of the Borrower or a Subsidiary if such Person sponsors, maintains or contributes to, or at any time in the six year period preceding such acquisition has sponsored, maintained, or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, (i) that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA or (ii) that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such plan allocable to such benefit liabilities.

Section 9.09 Sale or Discount of Receivables. Except (a) sales otherwise permitted pursuant to Section 9.11 and (b) for receivables obtained by the Borrower or any Subsidiary from the settlement of joint interest billing accounts in the ordinary course of business or discounts granted to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. The Borrower will not, and will not permit any Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a “consolidation”), or liquidate or dissolve, except (a) with the consent of the DIP Agent or the Required Lenders, or (b) that the Borrower or any Subsidiary may sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person pursuant to one or more Qualified APAs, the proceeds of which are remitted to the DIP Agent concurrently with the consummation of such disposition in an amount necessary to repay all of the Secured Obligations concurrently with the consummation of such disposition, and which results in the Payment in Full of all of the Secured Obligations.

Section 9.11 Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property except for:

(a) dispositions of cash and Cash Equivalents in the ordinary course of business and in connection with transactions permitted by this Agreement;

(b) the sale of inventory in the ordinary course of business;

(c) the sale or transfer of obsolete or worn out property and property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registration or application for registration of any Intellectual Property

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that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned or be invalidated), whether now owned or hereafter acquired, in the ordinary course of business or is replaced by replacement property of at least comparable value and use;

(d) Restricted Payments permitted by Section 9.04 and Liens permitted by Section 9.03;

(e) the transfer of Property to another Loan Party;

(f) the transfer of Property occurring in connection with a transaction permitted by, and made in compliance with, the provisions of Section 9.10;

(g) dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business to the extent permitted under Section 9.09;

(h) grants of Leases, subleases, licenses or sublicenses (including the provision of software under an open source license), easements, rights of way or similar rights or encumbrances in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries; and

(i) transfers of Property that has suffered a Casualty Event upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) other Asset Sales of the Properties listed on Schedule 9.11 for fair market value; *provided* that such Asset Sale shall have been approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order in form and substance satisfactory to the Required Lenders and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii); and

(k) other Asset Sales pursuant to a *de minimis* asset sales procedures order that is an Approved Bankruptcy Court Order; *provided* that the Net Sale Proceeds thereof in excess of [\$] in the aggregate for all such Asset Sales shall be applied in accordance with Section 3.04(b)(ii).

Section 9.12 Environmental Matters. With respect to the Properties and any operations thereat or associated therewith, the Borrower will not, and will not permit any Subsidiary to, be in violation of Environmental Law, have any Release or threatened Release of Hazardous Materials other than those that are in compliance with Environmental Law, allow any exposure to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation, or be required under Environmental Law to perform any Remedial Work.

Section 9.13 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor), except (a) Restricted Payments permitted by Section 9.04, (b) Investments permitted by Section 9.05, and (c) transactions that are otherwise permitted under

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this Agreement and the Approved Bankruptcy Court Orders, and are upon fair and reasonable terms no less favorable to it, when taken as a whole, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 9.14 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary. The Borrower shall not, and shall not permit any Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 9.11(f), Section 9.11(g) or Section 9.15. Neither the Borrower nor any Subsidiary shall have any Foreign Subsidiaries or any Subsidiaries that are not Wholly-Owned Subsidiaries.

Section 9.15 Limitation on Issuance of Equity Interests. The Borrower shall not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for Equity Interests issued to another Loan Party. The Borrower and the Subsidiaries shall comply with Section 8.12 with respect to any such issued Equity Interests.

Section 9.16 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any material agreement or arrangement (other than (a) the Loan Documents, (b) the loan documents for the Prepetition Facilities (c) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (d) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (e) documents creating Liens which are described in clauses (g) or (h) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h)), (f) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any subsidiary pending the consummation of such sale, (g) [reserved], (h) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (i) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the DIP Agent and the Lenders, or that requires the consent of or notice to other Persons in connection therewith, or that restricts any Subsidiary from paying dividends or making distributions to, making Investments in, or transferring any of its Property to the Borrower or any Guarantor, or that requires the consent of or notice to other Persons in connection therewith.

Section 9.17 Hedging Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Hedging Agreements with any Person other than Hedging Agreements in respect of commodities or interest rates (i) with an Approved Counterparty and (ii) that are entered into for the purpose of hedging exposure to interest rates or commodity prices and that are not for speculative purposes. In no event shall any Hedging Agreement contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post

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collateral or margin to secure their obligations under such Hedging Agreement or to cover market exposures, other than Letters of Credit (and the proceeds thereof) the face amounts of which do not exceed \$[5,000,000] in the aggregate at any time.

Section 9.18 Holding Company. The Borrower will remain a holding company and will not own any real property, immovable property, or other assets of material value other than Equity Interests in Subsidiaries, furniture, furnishings and equipment acquired and maintained in the ordinary course of business, Investments to the extent permitted hereunder, assets acquired that are promptly, and in any event within 30 days of acquisition by the Borrower, transferred, contributed or otherwise assigned by the Borrower to one or more of the other Loan Parties, and interests in contracts customarily entered into by the Borrower in the ordinary course of its business.

Section 9.19 Sale and Leaseback. The Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.20 Amendments to Organization Documents, Material Contracts, Fiscal Year End; Prepayments of other Indebtedness.

(a) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organization Documents.

(b) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) any Material Contract in a manner that would be adverse to the Lenders in any material respect.

(c) The Borrower shall not, and shall not permit any Subsidiary to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

(d) The Borrower shall not, and shall not permit any Subsidiary to, make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any outstanding prepetition Indebtedness, except as otherwise permitted by this Agreement, the DIP Orders or any Approved Bankruptcy Court Order.

Section 9.21 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 7.26, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law,

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or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to any Lender any certification or other evidence requested from time to time by such Lender confirming the Borrower's and the Subsidiaries' compliance with this Section 9.21(a)).

(b) The Borrower shall not, and shall not permit any Subsidiary to, cause or permit any of the funds of the Borrower or any Subsidiary that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Governmental Requirement.

Section 9.22 Embargoed Person. The Borrower shall not, and shall not permit any Subsidiary to, permit (a) any of the funds or Properties of the Borrower or any Subsidiary that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or Governmental Requirement promulgated thereunder, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement, or the Loans would be in violation of a Governmental Requirement, or (ii) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower or any Subsidiary, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement or the Loans are in violation of a Governmental Requirement.

Section 9.23 Deposit Accounts, Securities Accounts and Commodity Accounts. Subject to Section 8.20, the Borrower will not, and will not permit any Subsidiary to, deposit any funds, securities or commodities in any Deposit Account (other than payroll Deposit Accounts consistent with current practice and Deposit Accounts used solely for any healthcare program), Securities Account or Commodity Account (each, as defined in the Uniform Commercial Code, as it may be amended, from time to time in effect in the State of New York), as applicable, unless such account is subject to a valid Lien in favor of the DIP Agent for the benefit of the Secured Parties and a control agreement in form and substance satisfactory to the Required Lenders.

Section 9.24 Southcross Holdings Receivables. The Borrower will not, and will not permit any Subsidiary to, permit any account receivable owing from Southcross Holdings to the Borrower to be more than 30 days past its due date.

Section 9.25 Additional Bankruptcy Matters. Without the Required Lenders' prior written consent, the Borrower will not, and will not permit any Subsidiary to, do any of the following:

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(a) assert or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such) or the Prepetition Secured Parties, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Lenders;

(b) subject to the terms of the DIP Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the DIP Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default (provided that any Loan Party may contest or dispute whether an Event of Default has occurred); or

(c) except as expressly provided or permitted hereunder (including, without limitation, to the extent expressly identified in any line item in the Approved Budget) or, with the prior consent of the Required Lenders, as provided pursuant to any other Approved Bankruptcy Court Order, make any payment or distribution to any Affiliate that is not a Loan Party or to any insider of the Borrower outside of the ordinary course of business; and

(d) notwithstanding anything to the contrary in this Agreement, the DIP Orders or any of the other Loan Documents, propose, adopt, support, consummate or effect any Chapter 11 Plan, plan of liquidation, sale, structured dismissal or any other resolution of the Cases, unless such case resolution provides for the Payment in Full in cash on the effective date thereof of the Secured Obligations (including any Loans held by the Lenders).

Section 9.26 Other Superpriority Claims. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the DIP Agent and the Lenders against the Loan Parties hereunder, except for the Carve-Out or as otherwise provided in the DIP Orders.

ARTICLE X EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. One or more of the following events shall constitute an “**Event of Default**”:

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

(b) The Borrower shall fail to pay any interest on any Loan or fee or other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party, any Subsidiary of the Borrower or Holdings in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or

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waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) The Borrower or any Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 8.01(j), Section 8.02, Section 8.03, Section 8.07, Section 8.20, Section 8.23, Section 8.24 or in Article IX or (ii) 8.01(q) and such failure in respect of this clause (ii) shall continue unremedied for two (2) Business Days.

(e) Any Loan Party or any Subsidiary of the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of fifteen (15) days after the earlier to occur of (i) notice thereof from the DIP Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer, or a Responsible Officer of such Subsidiary, otherwise becoming aware of such default.

(f) The Borrower or any Subsidiary shall fail to make any payment of principal of or interest on any postpetition Material Indebtedness, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace.

(g) Except with respect to obligations that are unenforceable as a result of the commencement of the Chapter 11 Cases and defaults that occur solely as a result of the filing of the Chapter 11 Cases, any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Subsidiary to make an offer in respect thereof.

(h) The LC Cash Collateralization Amount, at any time, exceeds the Letter of Credit Deposit Amount.

(i) [Reserved]

(j) The Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) (i) One or more postpetition judgments for the payment of money in an aggregate amount in excess of \$1,000,000 or (ii) any one or more non-monetary postpetition judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the Borrower, any Subsidiary or any combination thereof and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

(l) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding

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and enforceable in accordance with their terms against any Loan Party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or any Loan Party or any of their Affiliates shall so state in writing.

(m) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when together with all other ERISA Events that have occurred, could reasonably be expected to result in the liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000 in the aggregate.

(n) A Change in Control shall occur.

(o) (i) Any Debtor shall fail to comply with any of the provisions of the DIP Orders, any order related to the Credit Facility, cash management or bank accounts, or any Chapter 11 Plan, or any other Bankruptcy Court order that affects or may reasonably be expected to affect any of the rights, remedies, powers, privileges, claims or Liens of the DIP Agent or any other Secured Party;

(ii) unless otherwise approved by the DIP Agent or the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to any Chapter 11 Case, and such order shall not be reversed or vacated;

(iv) a trustee, examiner or other responsible officer shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(v) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or the filing by a Debtor of a motion seeking any such relief, or the failure of a Debtor to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the Bankruptcy Court;

(vii) the Bankruptcy Court shall enter an order terminating the exclusive right of any Debtor to file a Chapter 11 Plan;

(ix) any or all Loan Parties shall enter into an agreement for, or any Debtor shall file (or support or fail to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the respective court) a motion seeking, or the Bankruptcy Court shall enter, an order authorizing, a sale of all or substantially all of such Loan Party's assets for a cash price or other terms that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless the terms are otherwise acceptable to the Required Lenders;

(x) any Debtor shall file a motion seeking authority to consummate a sale of assets of such Debtor or any of its Subsidiaries (other than any such sale of assets that is permitted by the Loan Documents) outside the ordinary course of business, or any sale of any part of the Collateral pursuant to Section 363 of the Bankruptcy Code, in each case, that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless such sale is otherwise permitted under Section 9.11 or is otherwise acceptable to the Required Lenders;

(xi) without the prior written consent of the DIP Agent or the Required Lenders, any Debtor shall file a motion to alter, amend, vacate, supplement, or modify, in any respect, either of the DIP Orders or either of the DIP Orders is reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, *provided* that entry of the Final DIP Order shall not be deemed to reverse, modify, amend, stay or vacate the Interim DIP Order for purposes of this clause (xii);

(xii) the Bankruptcy Court shall enter an order granting any Person, other than the DIP Agent, relief from the automatic stay under the Cases, in either case, to permit enforcement on, foreclosure on or repossession of any Collateral or other assets of any Loan Party if such relief could reasonably be expected to have a Material Adverse Effect, or to permit the commencement or continuation of prepetition litigation against any Debtor for any purpose other than to liquidate the amount of a disputed claim involving potential liability not covered by insurance, which litigation could reasonably be expected to result in net liabilities in excess of \$250,000 or otherwise have a Material Adverse Effect;

(xiii) an order shall be entered for the substantive consolidation of the Estate of any Debtor with any other Person, unless such Person is another Debtor, and such order granting substantive consolidation provides that the assets of such Debtor shall remain subject to the Liens of the DIP Agent and Prepetition Agents securing the Secured Obligations and the Prepetition Obligations, respectively;

(xiv) any Debtor shall contest the validity or enforceability of the Credit Facility, any Debtor shall deny in writing that such Debtor has any further liability or obligation under the Credit Facility, or the DIP Agent or Secured Parties shall cease to have the benefit of the Liens granted by any of the DIP Orders once such orders have been made;

(xv) an order shall be entered by the Bankruptcy Court avoiding or requiring disgorgement by the DIP Agent or any other Secured Party of any amounts received in respect of the Secured Obligations or Prepetition Obligations;

(xvi) a Debtor shall file any motion or other request with the Bankruptcy Court seeking authority to use any cash proceeds of the DIP Collateral or the Prepetition Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code or other applicable law secured by a Lien upon any Collateral, in each case without the DIP Agent's prior written consent unless motion

contemplates the Payment in Full of the Secured Obligations immediately upon the consummation of the transactions contemplated thereby;

(xvii) except as permitted in the DIP Orders, the Bankruptcy Court enters any order in any of the Chapter 11 Cases granting to any Person a Superpriority Claim or Lien *pari passu* with or senior to that granted to the DIP Agent under the DIP Orders;

(xviii) any Loan Party shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of the DIP Agent securing the Secured Obligations or any Liens of any Prepetition Agent securing the Prepetition Obligations, or the validity or enforceability of any of the Loan Documents or Prepetition Loan Documents, or asserting any Avoidance Claim against any of the Prepetition Secured Parties, or seeking to recover any monetary damages from the DIP Agent, any Lender, any of the Prepetition Secured Parties;

(xix) a Challenge (as defined in the DIP Orders) shall be filed by any party in interest and shall be sustained by the Bankruptcy Court, in whole or in part; or

(xx) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; *provided* that the Loan Parties hereby agree that the DIP Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the DIP Agent is authorized to represent to the Bankruptcy Court that the Loan Parties have consented to such expedited hearing on the motion);

(p) Any Case Milestone shall have not been met;

(q) Any Loan Party seeks to obtain Bankruptcy Court approval of a disclosure statement or Chapter 11 Plan other than a disclosure statement relating to, or a plan that is, an Acceptable Plan, or any of the Loan Parties or affiliates file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(r) Entry of an order approving a Section 363 Sale unless such order contemplates the Payment in Full of the DIP Facility upon consummation of such sale or such terms are otherwise acceptable to the Required Lenders; or

(s) The Interim DIP Order or Final DIP Order, as applicable, ceases to create a valid and perfected security interest and lien on the DIP Collateral.

Section 10.02 Remedies.

(a) Subject to the terms of the DIP Orders, in the case of an Event of Default, at any time thereafter during the continuance of such Event of Default, the DIP Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon

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the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Loan Documents shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the DIP Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied, subject to the DIP Order (including the Remedies Notice Period (as defined therein)), the Carve-Out and, if applicable, the Wind-Down Budget:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the DIP Agent in its capacity as such;

(ii) *second, pro rata* to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) *third, pro rata* to payment of accrued interest on the Loans;

(iv) *fourth, pro rata* to payment of (A) principal outstanding on the DIP Term Loans, (B) Secured Obligations referred to in clause (c) of the definition of Secured Obligations owing to a Bank Products Provider, and (C) any other Secured Obligations (other than Roll-Up Loans);

(v) *fifth, pro rata* to payment of any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis;

(vi) *sixth*, to repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); and

(vii) *seventh*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

Notwithstanding the foregoing, Bank Products shall be excluded from the application described above if the DIP Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products

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Provider Each Bank Products Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the DIP Agent pursuant to the terms of Article XI for itself and its Affiliates as if a “Lender” party hereto.

ARTICLE XI THE DIP AGENT

Section 11.01 Appointment and Authority. Each of the Lenders and each Issuing Bank hereby irrevocably appoints Wilmington Trust, National Association, to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the DIP Agent, the Lenders and each Issuing Bank, and neither the Borrower nor any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the DIP Agent is hereby expressly authorized to (a) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Instruments and (b) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

Section 11.02

Section 11.03 Rights as a Lender. The Person serving as the DIP Agent hereunder shall, if applicable, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the DIP Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.04 Exculpatory Provisions.

(a) The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the DIP Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (it being understood that the term “agent” used herein and in the other Loan Documents with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine or any other applicable law; rather, 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);

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the DIP Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02 or 12.02); *provided* that the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the DIP Agent to liability, if the DIP Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable law including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The DIP Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.02 and Section 10.02) or (ii) otherwise hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The DIP Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the DIP Agent by the Borrower, a Lender or an Issuing Bank.

(c) The DIP Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,

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effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the DIP Agent or as to those conditions precedent expressly required to be to the DIP Agent's satisfaction, (vi) the existence, value, perfection, or priority of any collateral security or the financial or other condition of the Loan Parties and the Subsidiaries or any other obligor or guarantor, or (vii) any failure by any Loan Party or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements, or other terms or conditions set forth herein or therein.

Section 11.05 Reliance by DIP Agent. The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the DIP Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the DIP Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.06 Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XI and Section 12.03(b) and (c) shall apply to any such sub agent and to the Related Parties of the DIP Agent and any such sub agent, and shall apply to their respective as DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.07 Resignation of DIP Agent. The DIP Agent may at any time give notice of its resignation to the Lenders, each Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a bank as a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring DIP Agent gives notice of its resignation, then the retiring DIP Agent may on behalf of the Lenders and each Issuing Bank, appoint a successor DIP Agent meeting the qualifications set forth above, *provided* that if no such successor DIP Agent has been appointed by the 30th day after the resigning DIP Agent gave notice of its resignation, the retiring DIP Agent's resignation

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shall nevertheless thereupon become effective in accordance with such notice and (a) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the DIP Agent on behalf of the Lenders or any Issuing Bank under any of the Loan Documents, the retiring DIP Agent shall continue to hold such collateral security until such time as a successor DIP Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor DIP Agent as provided for above in this Section 11.06. Upon the acceptance of a successor's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring DIP Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

Section 11.08 Non-Reliance on DIP Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents, or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties or the Subsidiaries. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the DIP Agent hereunder, the DIP Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of the Loan Parties (or any of their Affiliates) which may come into possession of the DIP Agent or any of its Affiliates. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.09 [Reserved.]

Section 11.10 Authority of DIP Agent to Release Collateral and Liens. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to release (a) any Collateral that is permitted to be sold or released pursuant to the terms of the Loan

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Documents, and (b) any Mortgaged Property that does not constitute Material Real Property if any Building (as defined in the applicable Flood Insurance Law) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Law) is situated on such Mortgaged Property and the DIP Agent, in its sole discretion, determines that the costs, financial and otherwise, of obtaining or maintaining a Lien or complying with all Governmental Requirements with respect to such Lien outweigh the benefit to the Secured Parties of the security afforded thereby. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to execute and deliver to the Borrower (or file, if appropriate), at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents. To the extent any Property is sold, assigned, conveyed or otherwise transferred as expressly permitted by Section 9.11 to any Person other than a Loan Party, such Collateral shall be sold, assigned, conveyed or otherwise transferred free and clear of all Liens created by the Loan Documents.

Section 11.11 Action by the DIP Agent. The DIP Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as provided in Section 10.02 or Section 12.02) and in all cases the DIP Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders, the Lenders or the Issuing Banks, as applicable, (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders or Issuing Banks, as applicable, against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the DIP Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the DIP Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section, *provided* that, unless and until the DIP Agent shall have received such directions, the DIP Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the DIP Agent be required to take any action which exposes the DIP Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law.

Section 11.12 Certain Secured Parties. No Bank Products Provider that obtains the benefit of Section 10.02(c) or any Collateral by virtue of the provisions hereof or any Security Instrument or DIP Order 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, any DIP Order or of any

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Security Instrument) 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 XI to the contrary, the DIP Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products except to the extent expressly provided herein and unless the DIP Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products Provider. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products in the case of a Maturity Date.

ARTICLE XII MISCELLANEOUS

Section 12.01 Notices.

(a) Notices Generally. Subject to Section 12.01(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at the following:

Southcross Energy Partners, L.P.
1717 Main Street, Suite 5300
Dallas, TX 75201
Attn: Michael B. Howe
Fax: (214) 979-3710
Email: michael.howe@southcrossenergy.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Ave
New York, NY 10017
Attn: Jinsoo H. Kim
Fax: (212) 701-5217
Email: jinsoo.kim@davispolk.com

(ii) if to the DIP Agent, to it at the following:

Wilmington Trust, National Association.
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Nikki Kroll
Fax: (612) 217-5651
Email: nkroll@wilmingtontrust.com

with copies to (which shall not constitute notice):

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Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 1001909710
Attn: Alan Glantz
Fax: (212) 836-6763
Email: alan.glantz@arnoldporter.com

and

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attn: Leonard Klingbaum
Fax: (212) 728-9290
Email: LKlingbaum@willkie.com

(iii) if to Wells Fargo, as Issuing Bank, to it at the following:

[]

(iv) if to RBC, as Issuing Bank, to it at the following:

[]

(v) if to UBS AG, as Issuing Bank, to it at the following:

[]

(vi) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.01(b) below, shall be effective as provided in Section 12.01(b).

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the DIP Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II, Article III, Article IV and Article V if such Lender or such Issuing Bank, as applicable, has notified the DIP Agent that it is incapable of receiving notices under such Article(s) by electronic communication. The DIP Agent or the Borrower may, in its discretion,

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agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the DIP Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (B) of notification that such notice or communication is available and identifying the website address therefore.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the DIP Agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the DIP Agent, any Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the DIP Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and acknowledged by the DIP Agent, or by the Borrower and the DIP Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan

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or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender adversely affected thereby, *provided, however*, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) [reserved], (iii) except as provided in the definition of “Scheduled Maturity Date”, postpone the scheduled date of payment or prepayment of the principal amount of any Loan (excluding mandatory prepayments), or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date or Maturity Date without the written consent of each Lender adversely affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) or Section 12.14 or change the definition of the terms “Domestic Subsidiary”, “Foreign Subsidiary” or “Subsidiary”, without the written consent of each Lender (other than any Defaulting Lender), (vi) release any Guarantor (except as permitted pursuant to the Guaranty and Collateral Agreement or in connection with a sale of such Guarantor permitted under Section 9.11) or release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (vii) change any of the provisions of this Section 12.02(b), Section 10.02(c), or the definitions of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender other than any Defaulting Lender, (viii) change the application of prepayments under Section 3.04(c), without the written consent of the Required Lenders (it being understood that the Required Lenders may waive, in whole or in part, any prepayment so long as the application of any such prepayment that is still required to be made is not changed), or (ix) modify Section 2.07 (or any definitions related thereto) in any manner that is adverse to the Issuing Banks that have Letters of Credit outstanding without the consent of each such Issuing Bank; *provided, further*, that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the DIP Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the DIP Agent or any Issuing Bank, as the case may be, and (y) the Agency Fee Letter may be amended, or rights or privileged thereunder waived in a writing executed only by the parties thereto (without the need for the consent of any other party thereto). Notwithstanding the foregoing, (x) any supplement to Schedule 7.14 (Subsidiaries) shall be effective simply by delivering to the DIP Agent a supplemental schedule clearly marked as such and, upon receipt, the DIP Agent will promptly deliver a copy thereof to the Lenders, (y) the Borrower (or other applicable Loan Party) and the DIP Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document if the same is not objected to in writing by Lenders constituting the Required Lenders within 5 Business Days after the DIP Agent delivers written notice thereof to the Lenders, and (z) the DIP Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become

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Mortgaged Property to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 12.03 Expenses, Indemnity; Damage Waiver.

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the DIP Agent and its Affiliates and by the Lenders (including the reasonable fees, charges and disbursements of counsel and other outside consultants for the DIP Agent and the Lenders) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the DIP Agent as to the rights and duties of the DIP Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), (ii) all costs, expenses, Taxes, assessments and other charges incurred by the DIP Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), and (iv) all out-of-pocket expenses incurred by the DIP Agent, any Issuing Bank or any Lender (including the fees, charges and disbursements of any counsel for the DIP Agent, any Issuing Bank or any Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.03 or in connection with the Loans made or Letters of Credit issued hereunder, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, as counsel for the Issuing Banks, and local counsel in each material jurisdiction). Notwithstanding anything to the contrary contained in this Section 12.03(a) or elsewhere in any of the Loan Documents, neither the Borrower nor any Subsidiary shall be obligated to pay or reimburse any Person for any costs, expenses, fees, taxes or other charges of any nature whatsoever that are incurred or payable by any Person in connection with any assignment referred to in Section 12.04(b), any participation referred to in Section 12.04(d) or any pledge or security interest referred to in Section 12.04(f).

(b) **INDEMNIFICATION BY THE BORROWER.** THE BORROWER SHALL INDEMNIFY EACH AGENT (AND ANY SUB-AGENT THEREOF), ANY ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE

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FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN “**INDEMNITEE**”) AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE (LIMITED, IN THE CASE OF LEGAL FEES, DISBURSEMENTS AND CHARGES, TO THE REASONABLE AND DOCUMENTED FEES, DISBURSEMENTS AND OTHER CHARGES OF ARNOLD & PORTER LLP, AS COUNSEL TO THE DIP AGENT, WILLKIE FARR & GALLAGHER LLP, AS COUNSEL FOR THE LENDERS, VINSON & ELKINS LLP, AS COUNSEL FOR THE ISSUING BANKS, AND LOCAL COUNSEL IN EACH MATERIAL JURISDICTION), INCURRED BY ANY INDEMNITEE OR ASSERTED AGAINST ANY INDEMNITEE BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (ii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING, WITHOUT LIMITATION, (A) ANY REFUSAL BY ANY ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (vii) ANY ASSERTION THAT THE SECURED PARTIES WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY

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PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF ITS SUBSIDIARIES, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (x) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, (y) OTHER THAN IN THE CASE OF THE DIP AGENT AND ITS RELATED PARTIES, RESULT FROM A CLAIM BROUGHT BY THE BORROWER OR ANY SUBSIDIARY AGAINST ANY INDEMNITEE FOR BREACH IN BAD FAITH OF SUCH INDEMNITEE'S OBLIGATIONS HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, IF THE BORROWER OR SUCH SUBSIDIARY HAS OBTAINED A FINAL AND NONAPPEALABLE JUDGMENT IN ITS FAVOR ON SUCH CLAIM AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR (z) RESULT FROM ANY DISPUTE SOLELY AMONG INDEMNITEES, OTHER THAN ANY CLAIMS AGAINST ANY INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN AGENT, OR ANY SIMILAR ROLE UNDER THIS AGREEMENT, AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION ON THE PART OF THE BORROWER OR ANY OF ITS SUBSIDIARIES OR AFFILIATES.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay indefeasibly any amount required under Sections 12.03(a) or (b) to be paid by it to the DIP Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought (or, if such indemnity or reimbursement is sought after the date upon which the Loans

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shall have been paid in full and the Commitments have been terminated, in accordance with such Lenders' Applicable Share as in effect immediately prior to such date))) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the DIP Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any source against any amount due to the DIP Agent under this paragraph (c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof (other than to the extent any such damages are asserted pursuant to a third-party claim that would otherwise be required to be indemnified or reimbursed pursuant to any Loan Document). No Indemnitee referred to in Section 12.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the Transactions.

(e) Payments. All amounts due under this Section 12.03 shall be payable promptly after written demand therefor.

Section 12.04 Assignments and Participations.

(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 (including any Affiliate of any Issuing Bank that issues a Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the DIP Agent and each Lender, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of Section 12.04(b), (B) by way of participation in accordance with the provisions of Section 12.04(d), or (C) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.04(f) (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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(d)) and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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(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 assignments 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, no minimum amount need be assigned; and

(B) in any case not described in Section 12.04(b)(i)(A), 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 DIP Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the DIP Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement and 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 on a non- *pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 12.04(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the DIP Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the DIP Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Commitment or Credit Exposure if such assignment is to a

Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which may be waived or reduced in the sole discretion of the DIP Agent), and the assignee, if it is not a Lender, shall deliver to the DIP Agent an Administrative Questionnaire and any tax forms required under Section 5.03.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower, any Sponsor, or any of the Borrower's or any Sponsor's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) No Assignments to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender.

Subject to acceptance and recording thereof by the DIP Agent pursuant to Section 12.04(c), 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 Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(d).

(c) Register. The DIP Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon the DIP Agent's receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the DIP Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(c). The entries in the Register shall be conclusive, and the Borrower, the DIP Agent, any

Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any Issuing Bank, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, any Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent

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manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the DIP Agent (in its capacity as DIP Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.03(f) as though it were a Lender

(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, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and Section 12.04(e) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Restrictions if Registration Required. Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the DIP Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

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(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the DIP Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the DIP Agent or the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the DIP Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Effectiveness. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the DIP Agent and when the DIP Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof;

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and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Hedging Agreements, and in whatever currency) at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower or any Subsidiary against any and all of the obligations of the Borrower or any Subsidiary now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Subsidiary may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the DIP Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND, EXCEPT AS OTHERWISE SET FORTH THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL, EXCEPT AS OTHERWISE SET FORTH THEREIN, BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE COUNTY AND STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR

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PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO OTHER PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR ATTORNEY FOR ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the DIP Agent, any Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors (including accountants and legal counsel) and other 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), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or

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any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to any other party to this Agreement, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the DIP Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section 12.11, “**Information**” means all information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary relating to any Sponsor, Southcross Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the DIP Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by any Sponsor, Southcross Holdings, the Borrower or a Subsidiary; *provided* that, in the case of information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law

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applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

Section 12.13 Exculpation Provisions. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 [Reserved].

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialman) shall have any rights, claims, remedies or

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privileges hereunder or under any other Loan Document against the DIP Agent, any Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.16 USA Patriot Act Notice. The DIP Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**USA Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow the DIP Agent and such Lender to identify the Borrower and its Subsidiaries in accordance with the USA Patriot Act.

Section 12.17 [Reserved].

Section 12.18 Non-Recourse to the General Partner. This Agreement and the other Loan Documents do not and will not in any way constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary hereunder or thereunder. If any provision of this Agreement or any other Loan Document is held by any authority to constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary, such provision shall be deemed ineffective to the extent such provision constitutes a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary. Neither this Agreement nor any Loan Document is intended to create any liability of the General Partner for the performance of any obligation of the Borrower or any Subsidiary thereunder or hereunder. NEITHER THE DIP AGENT NOR ANY LENDER SHALL HAVE ANY RECOURSE AGAINST THE GENERAL PARTNER (INCLUDING ANY RECOURSE FOR ANY DEFICIENCY REMAINING UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT AFTER THE DISPOSITION OF COLLATERAL PLEDGED BY THE BORROWER OR ANY SUBSIDIARY AND THE DISPOSITION OF THE GP COLLATERAL PLEDGED BY THE GENERAL PARTNER); *PROVIDED*, THAT, NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN NO EVENT SHALL THIS SECTION 12.18 RELIEVE THE GENERAL PARTNER FROM ANY LIABILITY IT MAY HAVE AS A RESULT OF ITS FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR THAT OF ANY OF ITS OFFICERS, IN CONNECTION WITH THE EXECUTION, DELIVERY OR PERFORMANCE OF ANY LOAN DOCUMENTS OR ANY CERTIFICATES OR DOCUMENTS DELIVERED IN CONNECTION THEREWITH BY THE GENERAL PARTNER ON BEHALF OF THE BORROWER IN ITS CAPACITY AS THE BORROWER’S GENERAL PARTNER.

Section 12.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the DIP Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the DIP Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the DIP Agent and the Lenders are arm’s-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the

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DIP Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the DIP Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) neither the DIP Agent or the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the DIP Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and neither the DIP Agent nor any of the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the DIP Agent and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.20 [Reserved].

Section 12.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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[SIGNATURES BEGIN NEXT PAGE]

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The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

**SOUTHCROSS ENERGY PARTNERS,
L.P.**

By: Southcross Energy Partners GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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Each of the undersigned (i) consents and agrees to this Agreement, and (ii) agrees that the Loan Documents to which it is a party (including, without limitation, the Debtor-in-Possession Guaranty and Collateral Agreement dated as of [●], as applicable) shall remain in full force and effect and shall continue to be the legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

CONSENTED, ACKNOWLEDGED AND
AGREED TO BY:

**SOUTHCROSS ENERGY OPERATING, LLC
SOUTHCROSS ENERGY LP LLC
SOUTHCROSS ENERGY GP LLC
SOUTHCROSS DELTA PIPELINE LLC
SOUTHCROSS PROCESSING LLC
SOUTHCROSS ALABAMA PIPELINE LLC
SOUTHCROSS NUECES PIPELINES LLC
SOUTHCROSS ENERGY FINANCE CORP.
FL RICH GAS SERVICES GP, LLC
T2 EF COGENERATION HOLDINGS, LLC
T2 EF COGENERATION LLC**

By: _____
Name:
Title

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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**SOUTHCROSS CCNG GATHERING LTD.
SOUTHCROSS CCNG TRANSMISSION LTD.
SOUTHCROSS GULF COAST
TRANSMISSION LTD.
SOUTHCROSS MISSISSIPPI PIPELINE, L.P.
SOUTHCROSS MISSISSIPPI GATHERING,
L.P.
SOUTHCROSS ALABAMA GATHERING
SYSTEM, L.P.
SOUTHCROSS MIDSTREAM SERVICES, L.P.
SOUTHCROSS MARKETING COMPANY
LTD.
SOUTHCROSS NGL PIPELINE LTD.
SOUTHCROSS GATHERING LTD.
SOUTHCROSS MISSISSIPPI INDUSTRIAL
GAS SALES, L.P.**

By: Southcross Energy GP LLC,
as general partner

By: _____
Name:
Title:

FL RICH GAS SERVICES, LP

By: FL Rich Gas Services GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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FL RICH GAS UTILITY GP, LLC

By: _____
Name:
Title:

**FL RICH GAS UTILITY, LP
SOUTHCROSS TRANSMISSION, LP**

By: FL Rich Gas Utility GP, LLC, its general
partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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DIP AGENT:

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as the DIP Agent

By: _____
Name: _____
Title: _____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ISSUING BANK:

[●], as an Issuing Bank

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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LENDER:

[●], as a Lender

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ANNEX I
LIST OF COMMITMENTS

| Name of Lender | DIP LC Commitment | Initial Term Commitment | Delayed Draw Term Commitment | Commitment |
|-----------------------|------------------------------|------------------------------------|---------------------------------------------|-------------------------|
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| | | | | |
| TOTAL | \$55,000,000.00 | \$30,000,000.00 | \$42,500,000.00 | \$127,500,000.00 |

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ANNEX II
PREPETITION LETTERS OF CREDIT

| <u>Issuing Bank</u> | <u>Beneficiary</u> | <u>Applica nt</u> | <u>Amount</u> | <u>Issue Date</u> |
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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ANNEX III
PERMITTED VARIANCES

| Forecast Line Item | Testing Period | Permitted Variance |
|---------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Total Cash Receipts | First two-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash receipts not less than 85% of those shown on the Approved Budget for the applicable period |
| Total Cash Expenditures | First two-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash expenditures not to exceed 115% of those shown on the Approved Budget for the applicable period |

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ANNEX IV
INITIAL APPROVED BUDGET

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

SCHEDULE 8.20

Post-Closing Obligations

1. Insurance Endorsements. Within thirty (30) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall deliver to DIP Agent insurance certificates and endorsements for liability and property, that provide Wilmington Trust, National Association, and its successors and assigns, ATIMA, as DIP Agent for the Lenders, is additional insured or lender's loss payable, as applicable, in form and substance reasonably satisfactory to the DIP Representative and otherwise in compliance with Section 8.07 of the Credit Agreement.
2. Possessory Collateral. Within five (5) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall have delivered (a) any Pledged Securities, Instruments or Tangible Chattel Paper (as such terms are defined in the Guaranty and Collateral Agreement) existing as of the Effective Date and not otherwise delivered on the Effective Date and (b) any other Collateral existing as of the Effective Date that would have required to be delivered by the Guaranty and Collateral Agreement if such Collateral was acquired after the Effective Date and such Collateral is not otherwise delivered on the Effective Date.
3. Account Control Agreements. Within sixty (60) days of the Effective Date (or such later date as determined by Lender Representative in its reasonable discretion), the Loan Parties shall have entered into control agreements required by Section 9.23 of the Credit Agreement, in form and substance satisfactory to the DIP Agent.

Exhibit B

D'Souza Declaration

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

In re:

SOUTHCROSS ENERGY PARTNERS, L.P., *et al.*,

Debtors.¹

)
) Chapter 11
)
) Case No. 19-10702 (MFW)
)
)
) (Joint Administration Requested)
)

DECLARATION OF AVINASH D'SOUZA IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Avinash D'Souza hereby declares and says:

1. I am a Managing Director in the Restructuring and Debt Advisory Group at Evercore Group L.L.C. (“**Evercore**”), a provider of investment banking and financial advisory services that maintains offices at 55 East 52nd Street, New York, NY 10055 and around the world. I am authorized to make this declaration (this “**Declaration**”) on behalf of Evercore. I submit this Declaration in support of the *Motion of Debtors for*

¹ The debtors and debtors in possession in these Chapter 11 Cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5200, Dallas, TX 75201.

*Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief (the “**DIP Motion**”)² filed by Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly-owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).*

Qualifications

2. I received an M.B.A. from The Wharton School at the University of Pennsylvania in 2009, and a B.S. in Aerospace Engineering from the Georgia Institute of Technology in 2001. I have worked at Evercore since 2009—first as an Associate from 2009 to 2012, then as a Vice President from 2013 to February 2017, and currently as a Managing Director. Since joining Evercore in 2009, I have provided investment banking services to debtors and creditors through in-court and out-of-court restructurings across a number of industries. These matters have included balance sheet restructurings, exchange offers, raising capital for troubled companies, distressed sales, and other restructuring advisory mandates. I am authorized to execute this declaration on behalf of Evercore.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion.

3. Evercore is a leading independent investment banking advisory and investment management firm established in 1996. Evercore's investment banking business includes its advisory business, which provides a range of investment banking services to multinational corporations on mergers and acquisitions, divestitures, special committee assignments, recapitalizations, restructurings, and other strategic transactions. Through its investment banking business, Evercore provides capital markets advice, underwrites securities, raises funds for financial sponsors, and offers equity research and agency-only equity securities trading for institutional investors. Evercore's investment management business includes private equity investment, institutional asset management, and wealth management. Evercore and its affiliates serve a diverse set of clients around the world from offices in New York, Boston, Chicago, Los Angeles, Washington D.C., San Francisco, Houston, Minneapolis, Palo Alto, Menlo Park, Hong Kong, Singapore, London, Aberdeen, Mexico City, Monterrey, São Paulo, and Rio de Janeiro. Since the beginning of 2000, Evercore's corporate advisory and restructuring advisory groups have advised on over \$1.8 trillion of transactions. Evercore has been involved in many large and complex restructuring cases in this and other districts around the United States, including *In re David's Bridal, Inc.*, Case No. 18-12635 (Bankr. D. Del. Nov. 19, 2018); *In re MACH Gen GP, LLC*, Case No. 18-11369 (Bankr. D. Del. Jun. 11, 2018); *In re Enduro Resource Partners LLC*, Case No. 18-11174 (Bankr. D. Del. May 15, 2018); *In re Tops Holding II Corp.*, Case No. 18-22279 (Bankr. S.D.N.Y. Mar. 22, 2018); *In re Fieldwood Energy LLC*, Case No. 18-30648 (Bankr. S.D. Tex. Mar. 8, 2018); *In re Pac. Drilling S.A.*, Case No. 17-131393 (Bankr. S.D.N.Y. Jan. 26, 2018); *In re Orchard Acquisition Co., LLC (J.G. Wentworth)*, Case No. 17-12914 (Bankr. D. Del. Jan. 5,

2018); *In re Castex Energy Partners, L.P.*, Case No. 17-35835 (Bankr. S.D. Tex. Dec. 4, 2017); *In re GulfMark Offshore, Inc.*, Case No. 17-11125 (Bankr. D. Del. June 15, 2017); *In re Vanguard Nat. Res., LLC*, Case No. 17-30560 (Bankr. S.D. Tex. Mar. 20, 2017); *In re Azure Midstream Partners, LP*, Case No. 17-30461 (Bankr. S.D. Tex. Mar. 10, 2017); *In re Chaparral Energy, Inc.*, Case No. 16-11144 (Bankr. D. Del. May 9, 2016); *In re Midstates Petroleum Company, Inc.*, Case No. 16-32237 (Bankr. S.D. Tex. May 1, 2016); *In re Energy & Exp. Partners, Inc.*, Case No. 15-44931 (Bankr. N.D. Tex. Feb. 8, 2016); *In re Parallel Energy LP*, Case No. 15-12263 (Bankr. D. Del. Dec. 16, 2015); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Altegrity, Inc.*, Case No. 15-10226 (Bankr. D. Del. March 16, 2015); *In re Mineral Park, Inc.*, Case No. 14-11996 (Bankr. D. Del. Sept. 23, 2014 & Oct. 2, 2014); and *In re Energy Future Holdings Corp.*, Case No. 14-10979 (Bankr. D. Del. Sept. 16, 2014).

Evercore's Retention

4. Evercore has been engaged as investment banker and financial advisor to the Debtors, and members of my team and I have been working closely with the Debtors since March of 2019. In my representation of the Debtors, I have, among other things, provided advice on strategic and restructuring alternatives. I have also participated in many negotiations between the Debtors, their creditors, and other interested parties. Members of my team and I have also assisted the Debtors in reviewing the terms, conditions, and impact of various proposed restructuring alternatives, in addition to preparing to market the Debtors for a sale. Finally, I have participated in meetings with the Debtors' board of directors (the "**Board**") to keep the Board apprised of the restructuring negotiations, as well as the Debtors' financing and sale processes. This has included providing advice regarding strategic alternatives, including the commencement

of a chapter 11 bankruptcy reorganization. Through this process, Evercore has become intimately familiar with the Debtors' businesses, liquidity position, assets, and certain contractual arrangements.

5. I am not being compensated separately for this testimony other than through payments received by Evercore as a professional proposed to be retained by the Debtors. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by Evercore employees working with me or under my supervision, or information provided to me by the Debtors. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am authorized to submit this Declaration on behalf of the Debtors.

Background

I. The Debtors' Need for Post-Petition Financing and Access to Cash Collateral

6. The Debtors' need for post-petition debtor-in-possession financing is extensively described in the *Declaration of Michael B. Howe in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* (the "**Howe Declaration**"). Businesses throughout the natural gas industry came under intense pressure from 2014 to 2016, when gas prices (measured per million BTU at the Henry Hub) dropped from a high of \$8.15 on February 10, 2014, to a low of \$1.49 on March 4, 2016. The Debtors' businesses depend almost entirely on the demand for processing of newly extracted natural gas, and their experience during the crash was no exception: the price of Southcross's common units plummeted from a peak of \$24.79 in July of 2014 to a trough of \$0.38 in February of 2016. Nevertheless, while dozens of the Debtors' peer companies (including non-Debtor Southcross Holdings LP ("**Southcross Parent**")) filed for chapter 11 protection

as a result of the commodity price declines beginning in late 2014, the Debtors narrowly avoided filing for bankruptcy through operational cutbacks, several capital contributions from Southcross Parent and the Sponsors, and many amendments to its Prepetition Revolving Credit Agreement to, among other things, waive certain financial covenants.

7. Despite their ability to avoid a chapter 11 filing during the crash, the Debtors have never fully recovered. In fact, some of the Debtors' major facilities have been permanently shut down, the Bonnie View facility has only recently come back online after significant capital expenditures, and the Debtors continue to labor under a heavier debt burden than competitors that equitized a substantial portion of their funded debt in starting in 2015. Meanwhile, natural gas prices have stayed consistently low, with current prices below \$3.00 per million BTU.

8. Today, the Debtors and the Prepetition Secured Parties believe that an initial marketing process, followed by the prosecution of a to be agreed upon plan of reorganization ("**Plan Process**"), or absent such agreement, the pursuit of a sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code (the "**Section 363 Asset Sale**") will best maximize value for their stakeholders. Therefore, as described in the Howe Declaration, the Debtors intend to solicit non-binding indications of interest from potential purchasers for the first 50 days of these Chapter 11 Cases. Following this initial 50 day period, if the Debtors and Required Lenders have reached an agreement as to an Acceptable Plan (as defined in the DIP Credit Agreement), then the Debtors will seek to confirm such Acceptable Plan. If the Debtors and Required Lenders have not reached an agreement as to an Acceptable Plan in the first 50 days of the case, the Debtors will change its course of action and pursue a the

sale of all or substantially all of its assets pursuant to a Section 363 Asset Sale. In connection with a Section 363 Asset Sale, the Debtors and the DIP Lenders will negotiate in good faith a reasonable wind-down budget to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties' estates on a reasonable and appropriate timeline.

9. Under either path, the Debtors will remain subject to applicable milestones agreed to with their DIP Lenders. Without chapter 11 protection and the availability of debtor-in-possession financing, however, the Debtors would likely be unable to execute its management's value maximizing strategy as a result of upcoming liquidity and credit events.

10. In order to ensure their continued operations during the Chapter 11 Cases and to assure stakeholders of their ability to conduct a Plan Process or Section 363 Asset Sale within the proposed time frame, the Debtors are seeking immediate approval to obtain superpriority, priming lien debtor-in-possession financing in the aggregate principal amount of \$255 million (the "**DIP Financing**") to be funded by certain of the Prepetition Term Lenders (in their capacity as lenders under the DIP Facilities, the "**DIP Lenders**"), consisting of (a) a new money credit facility (the "**DIP New Money Facility**"; the loans incurred thereunder, the "**New DIP Loans**") with aggregate commitments of up to \$127.5 million, including a cash collateralized letter of credit sub-facility in an aggregate amount of up to \$55 million (the "**DIP L/C Sub-Facility**"), and (b) a loan facility, which shall be subject and subordinate to the DIP New Money Facility, to refinance dollar-for-dollar Prepetition Term Loans in the aggregate amount of \$127.5

million (the “**DIP Roll-Up Facility**” and, together with the DIP New Money Facility, the “**DIP Facilities**”). Certain of the Prepetition Term Lenders have agreed to commit, severally and not jointly, to provide the DIP Financing upon Southcross’s demand pursuant to that certain Commitment Letter, dated March 31, 2019, a copy of which is attached to the Motion as Exhibit D. The liquidity to be provided by the DIP Facilities, together with the use of Cash Collateral, will enable the Debtors to fund their operations during the course of the Chapter 11 Cases as they conduct the Plan Process or Section 363 Asset Sale and to preserve and maximize the value of their estates for the benefit of all parties in interest. The Debtors currently have \$2.4 million of unrestricted cash on hand. Based on the Debtors’ forecast, they will be unable to generate sufficient levels of operating cash flow in the ordinary course of business to cover their operating costs going forward or the projected restructuring costs of the Chapter 11 Cases without the DIP Financing, leaving them unable to complete either the Plan Process or Section 363 Asset Sale.

II. The Debtors’ Prepetition DIP Financing Marketing Efforts

11. Evercore and the Debtors’ other advisors engaged in discussions over a period of several weeks with representatives of the Prepetition Revolving Lenders and the Prepetition Term Loan Lenders about their interest in providing postpetition financing or their willingness to consent to third-party postpetition financing. Both groups insisted that they would not consent to any priming of their security interests as part of an outside debtor-in-possession financing. The Debtors do not have unencumbered assets of sufficient value to support enough collateralized financing to meet the Debtors’ cash needs during the chapter 11 cases. Consequently, the only practical alternative to postpetition financing provided by the Prepetition Revolving Lenders and/or Prepetition

Term Loan Lenders would have been debt that was either (a) partially unsecured or secured by liens junior to those securing the Prepetition Revolving Credit Agreement and the Prepetition Term Loan Credit Agreement, or (b) secured by senior loans on a priming basis, which priming was certain to be contested.

12. I understood that the unwillingness of the Prepetition Revolving Lenders and the Prepetition Term Loan Lenders to consent to the Debtors entering into senior loans on a priming basis would require the Debtors to prove, in order to obtain approval for such priming loans, that the interests of the Prepetition Revolving Lenders and the Prepetition Term Loan Lenders were “adequately protected” despite the priming. I understood that the Debtors’ ability to make the required showing would be highly uncertain as a factual matter and would almost certainly involve expensive and unpredictable litigation at the early stages of the chapter 11 cases that would be materially destabilizing to the Debtors’ business operations.

13. After discussing the situation with the Debtors and their other advisors, and based on our market experience, Evercore was reasonably confident that unsecured or junior financing would not be available in the market and that market participants would be unwilling to provide loans on a contested priming basis in light of the challenge and uncertainty of such a litigated path. Nonetheless, Evercore reached out to certain third-party potential funding sources to confirm whether there was, in fact, any market interest in providing debtor-in-possession financing that could be obtained without the consent of the Prepetition Term Loan Lenders and Prepetition Revolving Lenders on an unsecured or a junior secured basis. All of the parties contacted by Evercore were unwilling to provide unsecured or junior financing.

14. As a result, in parallel with their overall restructuring negotiations, the Debtors continued to engage with the Prepetition Term Loan Lenders and Prepetition Revolving Lenders on possibly providing postpetition financing.

15. Following negotiations with a group of Prepetition Term Lenders, certain of its members (the “**Ad Hoc Group**”) agreed to provide the DIP Financing to the Debtors with the consent of a majority of the Prepetition Revolving Lenders. The DIP Lenders were unwilling to provide the Debtors with financing on an unsecured or non-superpriority basis, but were willing and able to provide the financing on the time frame the Debtors required. The negotiations with the DIP Lenders were at arm’s length and were hard-fought. Many term sheets were exchanged in a very short period of time in March of 2019, and negotiations over the terms and structure of the DIP Financing continued into the days leading up to the Petition Date. In particular, the Debtors negotiated financing from the DIP Lenders that, although it contemplates either a Plan Process or Section 363 Asset Sale, was neither tied to a particular restructuring process, nor required the prior execution of a stalking horse bid. Other provisions include ensuring access to \$30 million of the DIP New Money Facility and \$55 million of the DIP L/C Sub-Facility immediately after entry of the Interim Order and milestones that will provide the Debtors with sufficient time to consummate either the Plan Process or Section 363 Asset Sale process. The Debtors’ management team was actively involved throughout this process, and the Board was kept well-informed.

16. Ultimately, the proposal from the DIP Lenders was not only the most advantageous proposal for financing available to the Debtors, but also the only one

available. As a result, the Debtors' management, advisors, and Board concluded that, given the circumstances, it exercised sound business judgment to pursue such financing.

17. The Debtors have, therefore, accepted the DIP Lenders' proposal to provide the DIP Financing to support the Chapter 11 Cases. I believe that the DIP Facilities will provide the Debtors with immediate access to the liquidity necessary to stabilize the Debtors' businesses during the pendency of the Chapter 11 Cases. Moreover, the liquidity provided under the DIP Facilities is necessary to facilitate the administration of the Chapter 11 Cases, fund all payments contemplated by the Debtors' "first day motions," and ensure that the Debtors are able to conduct and consummate the Plan Process or Section 363 Asset Sale. I believe that the immediate approval of the DIP Financing is critical to sending a signal to the Debtors' vendors, suppliers, customers, regulators, and approximately 205 employees that the Debtors intend, and will have the ability, to maintain current operations and successfully consummate a sale of substantially all of their assets.

The DIP Facilities

I. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Financing

18. It is my understanding that in order to enter into debtor-in-possession financing, a debtor must demonstrate that its decision was the product of its sound business judgment and that a reasonable business person would make a similar decision under similar circumstances.

19. Under the circumstances, the Debtors' determination to move forward with the DIP Financing is a sound exercise of their business judgment following a thorough process and careful evaluation of alternatives. *First*, and most importantly,

without access to the DIP Financing, the Debtors will not be able to pay expenses necessary to sustain their ongoing operations and, thus, they could be forced to shut down, which would irreparably impair the value of the Debtors during the these Chapter 11 Cases. *Second*, the DIP Financing is the only available source of liquidity to make such payments. *Third*, the Debtors negotiated the DIP Credit Agreement and other DIP Documents with the DIP Lenders in good faith, at arms' length, and with the assistance of their advisors. The Debtors' management team and legal and financial advisors, including Evercore, were actively involved throughout the process, and the Debtors believe that they have obtained the best (and only) financing available given the relative bargaining power of the Debtors and the DIP Lenders. The milestones in the DIP Documents are tailored to comport with the timelines of either the Plan Process or Section 363 Asset Sale. *Fourth*, I believe that the terms of the DIP Facilities are reflective of the market for financings of this type. The pricing, fees, and covenants provided for in the proposed DIP Facilities are reasonable, particularly for a severely distressed borrower with an urgent need for liquidity and an inability to solicit any viable alternative proposals.

20. Put simply, the DIP Lenders will not provide the DIP Financing on any other terms and no other existing stakeholder or third party has presented a viable alternative debtor-in-possession financing proposal. The proposed DIP Facilities, therefore, represents the Debtors' best option for financing the Chapter 11 Cases.

II. The Terms of the DIP Facilities and the Proposed Adequate Protection, Including the Superpriority Claims and Liens, Are Fair and Reasonable and Should Be Approved

21. It is my understanding that, pursuant to section 364(c) of the Bankruptcy Code, a debtor may obtain debtor-in-possession financing that provides the lenders with

superpriority claims, liens on unencumbered assets, and liens on property of the estate junior in priority to existing prepetition liens if (a) unsecured or non-superpriority financing is not available to the debtor, (b) the financing is necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable and adequate. It is my further understanding that, pursuant to section 364(d) of the Bankruptcy Code, a debtor may obtain debtor-in-possession financing that provides the lenders with liens on property of the estate senior or equal in priority to existing prepetition liens if the holder of such existing prepetition lien consents or the interests of such holder in such property are adequately protected. In my opinion, the Debtors' circumstances justify providing the DIP Lenders with superpriority claims, liens on unencumbered property and priming and junior liens on encumbered property.

A. Unsecured or Non-Superpriority Financing Is Not Available to the Debtors

22. As set forth above, the Debtors, together with their advisors, including Evercore, considered other sources of post-petition financing to determine whether the Debtors could obtain debtor-in-possession financing on terms better than those under the proposed DIP Financing. No other lender was willing to meet the Debtors' immediate cash need in the timing required.

23. In my opinion, the terms of the DIP Facilities are the product of extensive and good faith negotiations between the Debtors, the DIP Lenders, and the DIP Agent, each of whom was represented by experienced counsel and financial advisors. Through these vigorous negotiations, the Debtors were able to secure the most favorable terms possible for the DIP Financing, and the Debtors were not able to obtain financing on equal or better terms from the DIP Lenders, or any other source, without granting the

liens securing the DIP Facilities and providing the DIP Lenders with superpriority claims. Simply put, the DIP Facilities provide the Debtors with the liquidity they need at the lowest cost available. Based on the negotiation history of the DIP Financing and the marketing efforts undertaken by the Debtors and Evercore, the DIP Facilities represent the Debtors' best available post-petition financing option.

B. The DIP Financing Is Necessary to Preserve the Value of the Debtors' Estates

24. I also believe that the DIP Financing is necessary to preserve the value of the Debtors' estates. The Debtors currently have \$2.4 million of unrestricted cash on hand. Without the proceeds of the DIP Facilities, the Debtors would be (a) unable to fund critical payments, including obligations such as employee payroll and vendor payments in the ordinary course of business, that are essential to the Debtors' operational viability and (b) rapidly destabilized and forced to shut down their facilities in the near term, which would have irreparable consequences to these Chapter 11 Cases and to the Debtors' stakeholders. The DIP Facilities will provide the Debtors with sufficient liquidity to fund their operations and maximize the value of their assets as they work toward either the Plan Process or Section 363 Asset Sale.

C. The Terms of the DIP Facilities and the Proposed Adequate Protection Are Fair, Reasonable, and Adequate

25. I believe the terms of the DIP Facilities are fair, reasonable and adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors. The covenants and milestones included in the DIP Documents are reasonable and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. The terms of the DIP Facilities are also fair and reasonable under the circumstances, including, most notably, that there was only one viable, committed

provider of incremental post-petition financing for the Debtors: certain members of the Ad Hoc Group.

26. I also believe that the fees to be paid under the DIP Facilities are consistent with the market and are appropriate, particularly in light of the circumstances of the Chapter 11 Cases and market practice for debtor-in-possession financings of this size and type. All of the terms of the DIP Facilities were strenuously negotiated by the Debtors and their advisors to ensure that the terms were as favorable to the Debtors as possible under the circumstances, and I believe that such terms represent fair consideration for the critical financing being provided by the DIP Lenders.

27. Finally, it is my understanding that if the liens of a debtor-in-possession financing facility prime the liens of existing prepetition creditors, the Bankruptcy Code requires that the debtor provide the holders of the primed liens with adequate protection of their interest in the debtor's property. Here, the Prepetition Secured Parties have consented to the priming of their liens in exchange for adequate protection in the form of replacement liens, superpriority administrative claims, cash payments, and payment of certain fees and expenses, as well as reporting requirements (collectively, the "**Adequate Protection Obligations**"). In addition, the value of the Prepetition Secured Parties' collateral will be maximized if the Debtors are able to obtain the DIP Financing, which it cannot do without providing the priming liens. The critical liquidity provided by the proposed DIP Facilities permits the Debtors to avoid a disorderly chapter 7 liquidation and instead conduct a reorganization process in an orderly manner, thereby maximizing the value of the Prepetition Collateral for the benefit of all parties in interest, particularly

the Prepetition Secured Parties. Therefore, I believe that the Debtors' prepetition secured creditors are adequately protected.

III. The Refinancing of a Portion of the Prepetition Secured Debt is Appropriate

28. I believe that the proposed roll-up of the Prepetition Term Loans owed to the DIP Lenders and the cash collateralization and deemed reissuance of the Prepetition Letters of Credit is also justified under the circumstances. *First*, the DIP Lenders specifically negotiated for the Prepetition Debt Refinancing in the context of their commitment to provide the DIP Facilities on the terms described herein. The Debtors, on the one hand, and the DIP Lenders, on the other, engaged in arm's length negotiations and ultimately agreed to the Prepetition Debt Refinancing as consideration for, among other things, the DIP Lenders making available millions of dollars in additional "new money" to fund the Chapter 11 Cases. Indeed, the Prepetition Debt Refinancing is a condition of the DIP Facilities, without which, the DIP Lenders would not have agreed to provide the DIP Financing.

29. *Second*, the Prepetition Debt Refinancing will not prejudice the Debtors' stakeholders. The Prepetition Secured Parties' Prepetition Liens are first-priority liens on substantially all assets of the Debtors, and the DIP Liens, from which the refinanced obligations will benefit, are on substantially the same assets. Therefore, the refinanced obligations will not benefit from substantially different collateral.

30. *Third*, the proposed Prepetition Debt Refinancing does not affect the Debtors' debt service costs, in the aggregate, relative to the scenario in which none of the Prepetition Secured Debt was refinanced. Pursuant to the Adequate Protection Obligations, the Debtors have agreed to make current debt service payments on the Prepetition Secured Debt. Absent the Prepetition Debt Refinancing, the Debtors would

continue to make such payments in respect of the Prepetition Term Loans and Prepetition Letters of Credit to be refinanced.

31. Finally, I understand that roll-ups and repayments of prepetition debt, such as the Prepetition Debt Refinancing, remain subject to Challenge rights, are a common feature of debtor-in-possession financings, and have been approved in a variety of cases, including pursuant to interim financing orders.

IV. The Debtors Should be Authorized to Use Cash Collateral

32. It is my understanding that, pursuant to section 363 of the Bankruptcy Code, a debtor is permitted to use cash collateral if it obtains the consent of the secured party or provides adequate protection of such secured party's interests in its collateral. Here, the Prepetition Secured Parties have consented to the use of the Cash Collateral in exchange for the Adequate Protection Obligations, which, in my opinion, are sufficient to protect the Prepetition Secured Parties from any diminution in the value of their interests in the Prepetition Collateral (including Cash Collateral) resulting therefrom. Therefore, I believe the Adequate Protection Obligations are fair and appropriate under the circumstances to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and conditions set forth in the Interim Order, for the benefit of all parties in interest and the Debtors estates.

V. The Debtors Will Suffer Immediate and Irreparable Harm if They Do Not Obtain Immediate Interim Access to the DIP Facilities

33. It is my understanding that a debtor may not obtain credit until 14 days after service of a motion seeking access to same unless obtaining the credit is necessary to avoid immediate and irreparable harm to the estate. I believe that the Debtors will suffer immediate and irreparable harm if the Interim Order approving the DIP Facilities is

not entered sooner than 14 days after service of the DIP Motion and if the Debtors are not permitted to interim access to \$30 million of the DIP New Money Facility and \$55 million of the DIP L/C Sub-Facility. The Debtors require access to the DIP New Money Facility prior to the final hearing on the DIP Motion and entry of the final order approving the DIP Financing in order to continue operating, to pay their administrative expenses and to implement the relief requested in the Debtors' other "first day" motions. This relief is necessary for the Debtors to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest.

34. Accordingly, based on the foregoing, I believe that the Debtors would suffer immediate and irreparable harm if the DIP Financing is not approved and that the DIP Financing is the best-available debtor-in-possession financing available.

[Signature Page Follows]

I, the undersigned managing director of Evercore Group L.L.C., declare under penalty of perjury that the foregoing is true and correct.

Dated: April 1, 2019

/s/ Avinash D'Souza

Avinash D'Souza
Managing Director
Evercore Group L.L.C.

Exhibit C

DIP Budget

Southcross Energy
Cash Budget
(\$ in 000's)

| Week # | Week 1 | Week 2 | Week 3 | Week 4 | Week 5 | Week 6 | Week 7 | Week 8 | Week 9 | Week 10 | Week 11 | Week 12 | Week 13 | |
|----------------------------|---------------|---------------|--------------|---------------|--------------|--------------|--------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Week Ending | 4/5/2019 | 4/12/2019 | 4/19/2019 | 4/26/2019 | 5/3/2019 | 5/10/2019 | 5/17/2019 | 5/24/2019 | 5/31/2019 | 6/7/2019 | 6/14/2019 | 6/21/2019 | 6/28/2019 | Total |
| (\$'s in 000's) | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | Projected | |
| Total Receipts | 240 | 70 | 479 | 13,943 | 16,329 | 1,771 | 557 | 16,705 | 13,239 | 343 | 171 | 686 | 31,692 | 96,226 |
| Disbursements | | | | | | | | | | | | | | |
| Operating Disbursements | (841) | (872) | (316) | (2,990) | (562) | (1,183) | (5,531) | (6,690) | (12,057) | (5,139) | (2,262) | (4,951) | (19,190) | (62,584) |
| Capital Expenditures | (1,658) | (273) | (273) | (1,728) | (433) | (646) | (646) | (646) | (646) | (713) | (713) | (713) | (713) | (9,802) |
| DIP Interest/Fees | (2,948) | - | - | - | (2,373) | - | - | - | (2,059) | - | - | - | (2,370) | (9,750) |
| CH 11 Impacts | (5,257) | (3,254) | (4,686) | (7,001) | (18,657) | (1,033) | (684) | (1,671) | (3,531) | (34) | (17) | (69) | (5,032) | (50,925) |
| Professional Fees | (2,047) | - | - | - | (1,300) | - | - | - | (2,531) | - | - | - | (2,245) | (8,123) |
| Total Disbursements | (12,752) | (4,399) | (5,275) | (11,718) | (23,325) | (2,863) | (6,860) | (9,006) | (20,824) | (5,887) | (2,993) | (5,733) | (29,551) | (141,183) |
| Intercompany Settlement | (615) | - | - | - | 3,614 | - | - | - | 2,660 | - | - | - | 2,621 | 8,280 |
| Net Cash Flow | (13,127) | (4,329) | (4,796) | 2,225 | (3,381) | (1,092) | (6,303) | 7,699 | (4,925) | (5,544) | (2,821) | (5,047) | 4,763 | (36,677) |
| Cash Balance (Book) | | | | | | | | | | | | | | |
| Beginning Cash Balance | 2,658 | 19,080 | 14,751 | 9,956 | 12,181 | 8,799 | 7,708 | 1,404 | 50,966 | 46,041 | 40,497 | 37,676 | 32,629 | 2,658 |
| Net Cash Flow | (13,127) | (4,329) | (4,796) | 2,225 | (3,381) | (1,092) | (6,303) | 7,699 | (4,925) | (5,544) | (2,821) | (5,047) | 4,763 | (36,677) |
| DIP Borrowings / Draws | 29,550 | - | - | - | - | - | - | 41,863 | - | - | - | - | - | 71,413 |
| Ending Cash Balance | 19,080 | 14,751 | 9,956 | 12,181 | 8,799 | 7,708 | 1,404 | 50,966 | 46,041 | 40,497 | 37,676 | 32,629 | 37,393 | 37,393 |

Exhibit D

Commitment Letter

EXECUTION VERSION
CONFIDENTIAL

SOLUS ALTERNATIVE ASSET MANAGEMENT LP
250 Park Avenue
New York, NY 10177

SOUND POINT CAPITAL MANAGEMENT, LP
375 Park Avenue, 33rd Floor
New York, NY 10152

March 31, 2019

Southcross Energy Partners, L.P.
1717 Main Street, Suite 5200
Dallas, Texas 75201
Attn: James W. Swent III, Chief Executive Officer
Michael B. Howe, Chief Financial Officer

\$255,000,000 Senior Secured Superpriority Priming Debtor-in-Possession Financing

Commitment Letter

Gentlemen:

Southcross Energy Partners, L.P., a Delaware limited partnership (“**Borrower**”) and its direct and indirect subsidiaries (collectively, with the Borrower, the “**Company**” or “**you**” and each, a “**Loan Party**”) have advised certain funds or accounts managed or advised by Solus Alternative Asset Management LP (collectively, the “**Solus Parties**”) and certain funds or accounts managed or advised by Sound Point Capital Management, LP (collectively, the “**Sound Point Parties**”, and together with the Solus Parties, the “**DIP Provider Parties**”, “**us**” or “**we**”) that the Company is considering filing voluntary petitions (the proceedings resulting therefrom, the “**Cases**”) for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and the Company desires to have the right to cause the DIP Provider Parties to establish, subject solely to the conditions expressly set forth in the Form of Credit Agreement (as defined below), a senior secured priming superpriority debtor-in-possession facility in an aggregate principal amount of \$255,000,000 (the “**DIP Facility**,” and the loans thereunder, the “**DIP Loans**”) consisting of:

- (A) a senior secured priming superpriority term loan (the loans thereunder, the “**DIP New Money Loans**”) in an aggregate principal amount of \$72,500,000;
- (B) senior secured priming superpriority term loan (the loans thereunder, the “**DIP LC Loans**” and, together with the DIP New Money Loans, the “**New DIP Loans**”) in an aggregate principal amount of \$55,000,000 to cash collateralize a letter of credit subfacility for the issuance (or deemed issuance) of letters of credit to be issued by certain issuers; and
- (C) a senior secured priming superpriority term loan (the loans thereunder, the “**Roll-Up Loans**”) in an aggregate principal amount of \$127,500,000 to refinance certain pre-petition outstanding term loans.

The DIP Provider Parties are pleased to confirm the arrangements under which each of the DIP Provider Parties hereby commit, severally and not jointly, to accept and provide the DIP Facility upon the Borrower’s demand therefor, in each case, on the terms and subject to the conditions set forth in (a) this letter (this “**Commitment Letter**”), and (b) substantially the form of Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement attached hereto as Exhibit A (the “**Form of Credit**

Agreement”). To the extent not defined in this Commitment Letter, each capitalized term shall have the meaning assigned to it in the Form of Credit Agreement.

1. Commitment to Accept Demand to Provide Financing.

Each DIP Provider Party hereby grants to the Borrower an option (collectively, the “**Loan Put Option**”) to require such DIP Provider Party, severally and not jointly, to fund DIP Loans Ratably up to the amounts set forth on Schedule I hereto (the “**DIP Commitments**”) on the terms and subject to the conditions set forth in the Form of Credit Agreement, and upon exercise by the Borrower of such Loan Put Option by the demand of the Borrower, the DIP Provider Parties shall, severally and not jointly, fund Ratably such DIP Loans on the terms and subject to the conditions set forth in the Form of Credit Agreement. As used in this Commitment Letter, the term “**Ratably**” means, with respect to a DIP Provider Party, ratably based on such DIP Provider Party’s respective DIP Commitment as a share of the total DIP Commitments.

2. Purposes and Availability.

The DIP Facility shall be made available to the Borrower for the purposes and subject to the terms as set forth in the Form of Credit Agreement.

3. Certain Premiums and Fees.

As consideration for the commitments and obligations of the DIP Provider Parties hereunder, the Borrower and the other Loan Parties jointly and severally agree to pay or cause to be paid (a) on the Effective Date of the Form of Credit Agreement, a premium (the “**Premium**”) in cash in an aggregate amount equal to 1.00% of \$127,500,000 of the DIP Commitments Ratably to each DIP Provider Party, and (b) without duplication, the fees set forth in the Form of Credit Agreement (collectively, with the Premium, the “**Premiums and Fees**”) on the terms and subject to the conditions set forth therein. The DIP Provider Parties and the Company hereto agree to treat, for federal income tax purposes, (a) the fees set forth in Section 3.05 of the Form of Credit Agreement as a reduction to the issue price of the DIP Facility, (b) the Exit Fee (as defined in the Form of Credit Agreement) as interest, and (c) the undertakings and agreements by the DIP Provider Parties to accept the obligation to provide the DIP Facility pursuant to this Commitment Letter as the sale of an option by the DIP Provider Parties to the Borrower and the Premium as the cost for making such option available to the Borrower. The DIP Provider Parties and the Company shall not take any position or action inconsistent with such treatment and/or characterization.

You agree that, other than as expressly provided in this Commitment Letter, the Form of Credit Agreement or the Agency Fee Letter, no agents, co-agents, arrangers, or co-arrangers will be appointed, no titles will be awarded and no compensation will be paid in connection with the DIP Facility unless you and the DIP Provider Parties shall so agree.

4. Syndication; Participation by Certain Other Secured Parties.

In the event that you demand that the DIP Provider Parties provide the DIP Facility in excess of its initial allocation, the DIP Provider Parties may (and intend to) syndicate a portion of the DIP Facility, either before or after the Effective Date, to one or more financial institutions and other institutional lenders identified by the DIP Provider Parties in consultation with you (“**Other Secured Parties**”). You agree to use commercially reasonable efforts to assist, and to use commercially reasonable efforts to cause your subsidiaries to assist, us in completing a customary syndication reasonably satisfactory to us;

provided that such obligation to assist shall terminate on the date that the Final DIP Order is entered by the Bankruptcy Court.

Notwithstanding anything in this Section 4, neither DIP Provider Party shall be relieved or novated from its several obligations hereunder (including its obligation, severally but not jointly, to accept its obligation to fund, and fund, Ratably its portion of the DIP Facility on the Effective Date if any Other Secured Party fails to fund any portion of its commitment) in connection with any syndication, assignment or participation of the DIP Facility, including its commitments in respect thereof, until after the initial funding on the Effective Date, and the DIP Provider Parties shall continue to control and manage all aspects of the syndication in consultation with you. In addition, without limiting your obligations to assist with syndication efforts as set forth above, neither the commencement, conduct or completion of the syndication set forth in this Section 4 is a condition to the commitments hereunder or the acceptance of the obligation to fund the DIP Facility on the Effective Date.

5. Information.

You hereby represent that all written factual information (the “**Information**”) that has been or will be made available to us by you, or any of your representatives in connection with the transactions contemplated hereby, when taken as a whole, is correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto). You agree that if, at any time prior to the Effective Date, you become aware that any of the representations in the preceding sentence could be incorrect in any material respect if the Information were being furnished, and such representations and warranties were being made, at such time, then you will promptly supplement the Information so that such representations are correct in all material respects under those circumstances, and such supplementation shall cure any breach of any such representation. In arranging and syndicating the DIP Facility, we may use and rely on the Information without independent verification thereof and we do not assume responsibility for the accuracy or completeness of the Information.

6. Indemnification and Expenses.

You agree to reimburse the DIP Provider Parties for all reasonable and documented out-of-pocket fees, costs and expenses (which, in the case of legal fees and expenses, shall be limited to the fees, costs and expenses of Willkie Farr & Gallagher LLP and Houlihan Lokey, Inc.) incurred in connection with the DIP Facility and the preparation, negotiation and execution of the DIP Documents (the “**Expense Reimbursement Obligation**”), which reimbursement shall be made (i) on the Effective Date, to the extent the Effective Date occurs, (ii) to the extent the Effective Date does not occur prior thereto, at the Expiration Time (as defined below), and (iii) from time to time, promptly following presentation of a summary statement.

You agree to indemnify and hold harmless each of the DIP Provider Parties and their respective affiliates and controlling persons and their respective directors, officers, employees, members, agents, advisors and other representatives, successors and assigns (each an “**Indemnified Party**”), within ten (10) days of a written demand therefor, together with backup documentation supporting such indemnity request, from and against all claims, damages, liabilities and reasonable and documented out-of-pocket expenses (limited, in the case of legal expenses, one firm of counsel for all Indemnified Parties, taken as a whole (and, if necessary, by a single firm of local counsel in each appropriate jurisdiction for all Indemnified Party, taken as a whole (and, in the case of an actual or perceived conflict of interest where the Indemnified Party affected by such conflict informs you of such conflict and thereafter retains its own

counsel with your prior consent (not to be unreasonably withheld or delayed), of another firm of counsel (and local counsel, if applicable) for such affected Indemnified Parties)) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding (each, a “**Proceeding**”) or preparation of a defense in connection therewith) any aspect of the DIP Facility (or any use made or proposed to be made with the proceeds thereof), this Commitment Letter, in each case except to the extent such claim, damage, liability or expense (x) is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from fraud, the gross negligence or willful misconduct of such Indemnified Party or a material breach by such Indemnified Party of its obligations hereunder or under the DIP Documents or (y) arises from any claim, action, suit, inquiry, litigation, investigation or proceeding that does not involve an act or omission of you or any of your affiliates and that is brought by an Indemnified Party against any other Indemnified Party. In the case of a Proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such Proceeding is brought by you, your equityholders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the DIP Facility is consummated. The foregoing provisions of this paragraph shall be superseded to the extent covered by the applicable provisions of the DIP Documents upon execution thereof and thereafter shall have no further force and effect to the extent so superseded.

No Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your subsidiaries or affiliates or to your or their respective equityholders or creditors arising out of, related to or in connection with any aspect of the DIP Facility, this Commitment Letter or the Form of Credit Agreement, except solely to you, and then solely to the extent of direct, as opposed to special, indirect, consequential or punitive, damages determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the fraud, gross negligence, willful misconduct or a material breach by such Indemnified Party of its obligations under this Commitment Letter or the DIP Documents. Notwithstanding anything herein to the contrary, neither you, nor any of your affiliates shall be liable for any special, indirect, consequential or punitive damages (whether in contract or tort or otherwise) arising out of, related to or in connection with, this Commitment Letter, the Loan Documents or any aspect of the DIP Facility; provided, that nothing contained in this sentence shall limit your indemnification and reimbursement obligations to the extent such special, indirect, consequential or punitive damages are included in any third-party claim with respect to which such Indemnified Party is entitled to indemnification hereunder.

No Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct or actual damages resulting from the fraud, gross negligence or willful misconduct of such Indemnified Party, in each case as determined by a final and non-appealable judgment of a court of competent jurisdiction.

7. Sharing of Information; Absence of Fiduciary Relationship; Affiliate Activities.

You acknowledge that each of the DIP Provider Parties (each, together with its respective affiliates, a “**Financial Firm**”) may be engaged, either directly or through affiliates, in various activities, including securities trading, investment banking and financial advisory, investment management, principal investment, hedging, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. The Financial Firms may have economic interests that conflict with those of you and your affiliates. In the ordinary course of these activities, each Financial Firm may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and/or financial instruments (including bank loans) for its own account and for the accounts of its customers and may at any time hold long and short positions in such securities

and/or instruments. Such investment and other activities may involve securities and instruments of you and your affiliates, as well as of other entities and persons and their affiliates which may (a) be involved in transactions arising from or relating to the engagement contemplated by this Commitment Letter, (b) be customers or competitors of you or your subsidiaries or affiliates, or (c) have other relationships with you or your subsidiaries or affiliates. With respect to any securities and/or instruments so held by any Financial Firm or any of its customers, all rights in respect of such securities and instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, the Financial Firms may provide investment banking, underwriting and/or financial advisory services to such other entities and persons. The Financial Firms may also co-invest with, make direct investments in, and invest or co-invest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of you or such other entities. The transactions contemplated by this Commitment Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph.

The Financial Firms, in the course of such other activities and relationships, may acquire information about the transactions contemplated by this Commitment Letter or other entities and persons which may be the subject of the financing contemplated by this Commitment Letter. None of the Financial Firms and none of their respective affiliates will use confidential information obtained from you or your affiliates or on your or their behalf by virtue of the transactions contemplated hereby in connection with the performance by the Financial Firms of services for other companies or other persons and none of the Financial Firms will furnish any such information to any of their other customers. You also acknowledge that the Financial Firms have no obligation to use in connection with the transactions contemplated hereby, or to furnish to you, confidential information obtained from other companies or other persons.

You further acknowledge and agree that (a) no fiduciary, advisory or (except as expressly provided in the DIP Documents) agency relationship between you and the Financial Firms is intended to be or has been created in respect of any of the transactions contemplated by this Commitment Letter, irrespective of whether the Financial Firms have advised or are advising you on other matters, (b) the Financial Firms, on the one hand, and you, on the other hand, have an arm's-length business relationship that does not directly or indirectly give rise to, nor do you rely on, any fiduciary duty on the part of the Financial Firms (and you hereby waive and release, to the fullest extent permitted by law, any claims that you may have against the DIP Provider Parties and their respective affiliates with respect to any breach or alleged breach of fiduciary duty and agree that no DIP Provider Party shall have any liability (whether direct or indirect) to you in respect of such fiduciary duty claim or to any person asserting a fiduciary duty on behalf of or in right of you, including your equityholders, employees or creditors, in each case in connection with the transactions contemplated by this Commitment Letter), (c) you are capable of evaluating and understanding, and you understand and accept, the terms, risks and conditions of the transactions contemplated by this Commitment Letter, and (d) you have been advised that the DIP Provider Parties are engaged in a broad range of transactions that may involve interests that differ from your interests and that the Financial Firms have no obligation to disclose such interests and transactions to you by virtue of any fiduciary, advisory or agency relationship. In addition, please note that the DIP Provider Parties do not provide accounting, tax, investment, regulatory or legal advice.

8. Confidentiality.

This Commitment Letter is delivered to you on the understanding that: (a) without our prior consent, you shall not disclose, directly or indirectly, to any other person the Premiums and Fees, the DIP Commitment of any individual DIP Provider Party or, prior to the Acceptance Date, the Commitment Letter or the contents thereof (other than the Premiums and Fees or any individual DIP Provider Party's DIP Commitment) except (i) your affiliates and your officers, directors, employees, attorneys,

accountants, agents and advisors, in each case, on a confidential basis, (ii) in any legal, judicial or administrative proceeding or as otherwise required by law, court order, order of any administrative agency, regulation or any compulsory legal process or as requested by a governmental or regulatory authority (in which case you agree, to the extent practicable and permitted by law, to inform us promptly (in advance thereof, to the extent practicable and permitted by law) of such disclosure in such proceeding or process and, to the extent you may legally and practically do so, to allow us a reasonable opportunity to object to such disclosure (solely at our expense), and in any event to ensure that any such information so disclosed is accorded confidential treatment) or to the extent necessary in connection with the exercise of any remedy or enforcement of any rights hereunder or under the Form of Credit Agreement, (iii) you may disclose the aggregate amount of Premiums and Fees as part of the written financial projections that have been or will be made available to us by you, or any of your representatives on your behalf in connection with the transactions contemplated hereby, *pro forma* information or a generic disclosure of aggregate sources and uses related to the amount of Premiums and Fees related to the DIP Facility to the extent customary or required in offering and marketing materials (including any prospectus or offering memorandum) for the DIP Facility or in any public or regulatory filing requirement related to the DIP Facility, (iv) you may disclose the aggregate DIP Commitments of the DIP Provider Parties collectively, the aggregate DIP Commitments of the Solus Parties collectively, and the aggregate DIP Commitments of the Sound Point Parties collectively, and (v) (x) to the professionals retained by an official committee of unsecured creditors and/or to the U.S. Trustee appointed in connection with the Cases and (y) in connection with your motions to, and pleadings filed with, the Bankruptcy Court for the purpose of obtaining Bankruptcy Court approval of the DIP Facility and the terms and conditions thereof (in which case you agree to ensure that each individual DIP Provider Party's DIP Commitments, except as otherwise expressly permitted in this clause (a), are accorded confidential treatment); and (b) this Commitment Letter and the contents hereof (other than, in the case of clauses (i) and (ii) below, any individual DIP Provider Party's DIP Commitments) may be disclosed (i) on a confidential basis to proposed DIP Agent and DIP Lenders and to any rating agency in connection with the DIP Facility and their respective officers, directors, employees, members, partners, stockholders, attorneys, accountants, agents and advisors, (ii) in any syndication of the DIP Facility or in any other public or regulatory filing in connection with the DIP Facility, (iii) to the extent such information becomes publicly available other than by reason of improper disclosure by you in violation of any confidentiality obligations hereunder or (iv) as may be required by the rules, regulations, schedules and forms of the Securities and Exchange Commission in connection with any filings with the Securities and Exchange Commission. The obligations under this paragraph with respect to this Commitment Letter (but not the Premiums and Fees or any individual DIP Provider Party's DIP Commitments) shall terminate on the earlier of (x) to the extent covered thereby, the execution and delivery of the DIP Documents and (y) the first anniversary hereof. Notwithstanding anything in this Section 8 to the contrary, to the extent any of the DIP Provider Parties are bound by the provisions of a non-disclosure agreement with you, the provisions of such non-disclosure agreement shall govern the confidentiality obligations of such DIP Provider Party with respect to the transactions contemplated herein, and the provisions of this Section 8 shall not apply to such DIP Provider Party.

9. Miscellaneous.

This Commitment Letter shall not be assignable by you without the prior written consent of each other party hereto (and any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and the Indemnified Parties and is not intended to and does not confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and the Indemnified Parties to the extent expressly set forth herein, except to the extent that you and the DIP Provider Parties otherwise agree in writing. The DIP Provider Parties reserve the right to employ the services of their affiliates in performing the obligations contemplated hereby (and, in connection with such employment, the DIP Provider Parties may, subject to the confidentiality provisions hereof,

exchange with such affiliates information concerning you and your affiliates in connection with the DIP Facility and, to the extent so employed, such affiliates shall be entitled to the benefits afforded to the DIP Provider Parties hereunder) and to allocate, in whole or in part, to their affiliates the Premiums and Fees payable to the DIP Provider Parties in such manner as the DIP Provider Parties and their affiliates may agree in their sole discretion, but no DIP Provider Party shall be relieved of its obligations under this Commitment Letter as a result thereof.

This Commitment Letter may not be amended or any provision hereof or thereof waived or modified except by an instrument in writing signed by you and the DIP Provider Parties. Each of the parties hereto agrees that this Commitment Letter is a binding and enforceable agreement with respect to the subject matter contained herein (except as may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness, good faith and fair dealing and equitable principles of general applicability).

Section headings used herein are for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Commitment Letter. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by facsimile or electronic transmission (e.g., ".pdf" or ".tif") shall be effective as delivery of a manually executed counterpart hereof.

This Commitment Letter is the only agreement that has been entered into among us and you with respect to the DIP Facility and sets forth the entire understanding of the parties with respect thereto. This Commitment Letter shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York and to the extent applicable, the Bankruptcy Code.

The parties hereto hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court abstains from exercising jurisdiction, any New York State court or, to the fullest extent permitted under applicable law, federal court sitting in the Borough of Manhattan in The City of New York over any suit, action or proceeding arising out of or relating to the DIP Facility or the other transactions contemplated by this Commitment Letter or the performance of the obligations hereunder, and agree that any such suit, action or proceeding shall be brought in such courts. Service of any process, summons, notice or document by registered mail addressed to you or us shall be effective service of process for any suit, action or proceeding brought in any such court. The parties hereto hereby irrevocably and unconditionally waive, to the fullest extent permitted under applicable law, any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding has been brought in any inconvenient forum. The parties hereto hereby irrevocably agree to waive, to the fullest extent permitted under applicable law, trial by jury in any suit, action, proceeding, claim or counterclaim brought by or on behalf of any party related to or arising out of the DIP Facility or this Commitment Letter or the performance of the obligations hereunder. A final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

The DIP Provider Parties hereby notify you that, pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (as amended, the "**PATRIOT Act**"), they may be required to obtain, verify and record information that identifies the Loan Parties, which information includes names, addresses, tax identification numbers and other information that will allow the DIP Provider Parties to identify the Borrower and Guarantors in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective for the DIP Provider Parties.

The indemnification, expense reimbursement (if applicable in accordance with the terms hereof), jurisdiction, waiver of jury trial, governing law, service of process, venue, absence of fiduciary duty, affiliate activities, syndication, information and confidentiality provisions contained herein shall remain in full force and effect regardless of whether definitive financing documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or the commitments hereunder; provided, that your obligations under this Commitment Letter (other than (a) your obligations with respect to information (which shall survive as provided herein) and syndication and (b) your obligations with respect to confidentiality of the Premiums and Fees and any individual DIP Provider Party's DIP Commitments) shall automatically terminate and be superseded by the provisions of the DIP Documents upon the initial funding thereunder, and you shall automatically be released from all liability in connection therewith at such time.

10. Termination.

The DIP Provider Parties may terminate this Commitment Letter and the DIP Provider Parties' obligations hereunder by written notice to you if (a) any covenant or agreement in this Commitment Letter is not complied with by you or (b) any event occurs or information becomes available that, in the judgment of the DIP Provider Parties, results in or is likely to result in the failure to satisfy any condition precedent set forth or referred to in this Commitment Letter or in the Form of Credit Agreement.

11. Certain Other Provisions.

This Commitment Letter does not purport to include all of the representations, warranties, defaults, definitions and other terms which will be contained in the definitive DIP Documents.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms of this Commitment Letter by returning to us executed counterparts of this Commitment Letter not later than 5:00 a.m., New York City time, on April 1, 2019 (the date of receipt by us of such executed counterparts, the "**Acceptance Date**"). This offer will automatically expire at such time if we have not received such executed counterparts in accordance with the preceding sentence.

In the event that the initial borrowing under the DIP Facility does not occur on or before the Expiration Time, then the commitments hereunder shall automatically terminate unless the DIP Provider Parties shall, in their discretion, agree to an extension. "**Expiration Time**" means 11:59 p.m., New York City time, on the earliest to occur of (i) the date that is five (5) business days following the commencement of the Cases, unless on or prior to such time the Effective Date shall have occurred and the conditions to funding the portion of the DIP Facility then available to the Borrower shall have been satisfied, and (ii) April 8, 2019.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the attached copy of this Commitment Letter, which will become a binding agreement upon our receipt.

[Remainder of page intentionally left blank]

**SOLUS LONG-TERM
OPPORTUNITIES FUND MASTER
LP**

By: Solus Alternative Asset Management
LP

Its Investment Advisor


By:  _____

Name: Gordon J. Yeager

Title: Executive Vice President


**SOLUS OPPORTUNITIES IDF
SERIES INTEREST OF THE SALI
MULTI-SERIES FUND, L.P.**

By: Solus Alternative Asset Management
LP
Its Investment Subadvisor

By: 
Name: Gordon J. Yeager
Title: Executive Vice President


SOLA LTD

By: Solus Alternative Asset Management
LP
Its Investment Advisor

By: 
Name: Gordon J. Yeager
Title: Executive Vice President

**SOLUS OPPORTUNITIES FUND 4
LP**


By: Solus Alternative Asset Management
LP
Its Investment Advisor

By: 
Name: Gordon J. Yeager
Title: Executive Vice President

[Signature Page to DIP Commitment Letter]

**SOLUS OPPORTUNITIES FUND 5
LP**


By: Solus Alternative Asset Management
LP
Its Investment Advisor

By: 
Name: Gordon J. Yeager
Title: Executive Vice President

**SOLUS SENIOR HIGH INCOME
FUND LP**

By: Solus Alternative Asset Management
LP

Its Investment Advisor

By: 
Name: Gordon J. Yeager
Title: Executive Vice President

**SOUND POINT CAPITAL
MANAGEMENT, LP**, as Investment
Manager for and on behalf of the below
listed entities

By: 

Name: Kevin Gerlitz

Title: Authorized Signatory

| Legal Entity |
|------------------------------------------------------------------------------------------|
| Sound Point CLO VI-R, Ltd. |
| Sound Point Credit Opportunities Master Fund, L.P |
| Sound Point Senior Floating Rate Master Fund, L.P |
| American Beacon Sound Point Floating Rate Income Fund, a series of American Beacon Funds |
| Kaiser Foundation Hospitals |
| Kaiser Permanente Group Trust |
| Sound Point Montauk Fund, L.P. |
| Neuberger Berman Alternative Funds - Neuberger Berman Absolute Return Multi-Manager Fund |
| PURE Insurance Company |
| Principal Funds, Inc. - Global Multi-Strategy Fund |
| Teamsters Pension Trust Fund of Philadelphia & Vicinity |

ACCEPTED AND AGREED:

SOUTHCROSS ENERGY PARTNERS, L.P.

By: Southcross Energy Partners GP, LLC, its
general partner

James W. Swent III

By: _____

Name: James W. Swent, III

Title: President and CEO

EXHIBIT A

FORM OF CREDIT AGREEMENT

See attached.

**SENIOR SECURED SUPERPRIORITY PRIMING
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

dated as of

April [●], 2019

among

**Southcross Energy Partners, L.P.,
a Debtor and a Debtor-in-Possession, as Borrower,**

**Wilmington Trust, National Association,
as DIP Agent,**

and

The Lenders Party Hereto

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THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of April [●], 2019, is among: Southcross Energy Partners, L.P., a Delaware limited partnership and a debtor and debtor-in-possession (the “**Borrower**”); each of the Lenders from time to time party hereto; and Wilmington Trust, National Association, as agent for the Lenders (in such capacity, the “**DIP Agent**”);

RECITALS

A. The Borrower entered into that certain Term Loan Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Term Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Term Lenders**”) and Wilmington Trust, National Association, as successor administrative agent for the Prepetition Term Lenders (together with its successors in such capacity, the “**Prepetition Term Agent**”), pursuant to which the Prepetition Term Lenders extended to the Borrower term loans (“**Prepetition Term Loans**”) and made certain other financial accommodations to the Borrower and the other Loan Parties (as defined therein) pursuant to the terms thereof (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Term Loan Facility**”).

B. The Borrower entered into that certain Third Amended and Restated Revolving Credit Agreement dated as of August 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “**Prepetition Revolving Loan Agreement**”), with the financial institutions from time to time party thereto as lenders (together with their successors and assigns, collectively, the “**Prepetition Revolving Lenders**”), the financial institutions acting as issuing banks for the Prepetition Letters of Credit (the “**Prepetition LC Issuers**”) and Wells Fargo Bank, N.A. as administrative agent for the Prepetition Revolving Lenders (together with its successors in such capacity, the “**Prepetition Revolving Agent**”), pursuant to which the Prepetition Revolving Lenders extended revolving loans to the Borrower (the “**Prepetition Revolving Loans**”), issued Prepetition Letters of Credit and made certain other extensions of credit to the Borrower (such credit facility, together with the Loan Documents (as defined therein), the “**Prepetition Revolving Loan Facility**” and together with the Prepetition Term Loan Facility, the “**Prepetition Facilities**”).

C. On [●], 2019 (the “**Petition Date**”), the Loan Parties filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the “**Bankruptcy Court**”). The Loan Parties are continuing to operate their businesses and manage their properties as debtors and debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

E. Subject to the conditions precedent set forth herein, and the terms and conditions set forth herein, the Borrower has requested, and the Lenders and each Issuing Bank party hereto are willing to make available the credit facilities provided for herein for the purposes set forth herein. The parties hereto further agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING MATTERS

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

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

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Acceptable Plan**” shall mean a Chapter 11 Plan that (i) provides for the termination of the unused commitments under the Credit Facility and the Payment in Full in cash of the Secured Obligations (and, as applicable, cash collateralization of any issued and undrawn Letters of Credit) upon the effective date of such plan, (ii) provides that the effective date of such plan shall occur by a date that is within the applicable Case Milestones, and (iii) contains customary releases and other exculpatory provisions for the DIP Agent, the DIP Lenders, the Prepetition Revolving Agent, the Prepetition Term Agent, and the Prepetition Lenders in form and substance reasonably satisfactory to the DIP Agent (at the direction of the Required Lenders), and the Prepetition Revolving Agent, and the Prepetition Term Agent.

“**Adjusted LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the LIBO Rate for such Interest Period *multiplied* by the Statutory Reserve Rate.

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

“**Affected Loans**” has the meaning assigned to such term in Section 5.05.

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

“**Agency Fee Letter**” means that certain Fee Letter, by and between the Borrower and the DIP Agent, dated as of the Effective Date, as may be amended, restated, supplemented or otherwise modified from time to time.

“**Agreement**” means this Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, as the same may from time to time be amended, modified, supplemented or restated.

“**Alternate Base Rate**” means, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.5% and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a

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Business Day, the immediately preceding Business Day) *plus* 1.0%. If the DIP Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or the Adjusted LIBO Rate for any reason, including the inability or failure of the DIP Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternate Cash Collateral Amount” means up to the amount set forth on Schedule 1.02(a).

“Anti-Terrorism Law” has the meaning assigned to such term in Section 7.26(a).

“Applicable Margin” means (a) with respect to the DIP Term Loans, (i) for any ABR Borrowing thereof, 9.00%, and (ii) for any Eurodollar Borrowing thereof, 10.00% and (b) with respect to any Roll-Up Loans, 5.25%.

“Applicable Percentage” means, with respect to any Lender, the percentage of the aggregate Commitments represented by such Lender’s Commitment (or, if the Commitments have terminated or expired, the percentage of the aggregate Credit Exposures represented by such Lender’s Credit Exposure at such time); *provided* that in the case of Section 4.04 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the aggregate Commitments (disregarding any Defaulting Lender’s Commitments) represented by such Lender’s Commitment (or, if such Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments (and disregarding any Defaulting Lender’s unfunded Commitment based on the Commitments most recently in effect) at the time of determination).

“Approved Bankruptcy Court Order” means (a) the DIP Orders and the Cash Management Order, as each such order is in effect from time to time and (b) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral, (v) debtor-in-possession financing, or (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, or (viii) any transaction outside of the ordinary course of business with any Loan Party, that, in the case of each of the matters described under clauses (a) and (b), (x) is in form and substance satisfactory (or, solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to the Required Lenders in all respects, (y) once entered, has not been vacated, reversed or stayed and (z) has not been amended or modified except in a manner satisfactory (or,

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solely in the case of matters referred to in clause (b)(viii), reasonably satisfactory) to, the Required Lenders.

“Approved Budget” means, as of the Effective Date, the Initial Approved Budget and, thereafter, any budget approved by the Required Lenders pursuant to Section 8.01(q).

“Approved Counterparty” means (a) any Lender or any Affiliate of a Lender and (b) any other Person whose (or whose credit support provider’s) long term senior unsecured debt rating is A-/A3 by S&P or Moody’s (or their equivalent) or higher.

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

“Asset Sale” means any sale, transfer, assignment, conveyance or other disposition by any Loan Party, or any of its Subsidiaries to any Person (including by way of redemption by such Person) of any Property (including, without limitation, any capital stock or other securities of, or Equity Interests in, another Person), but excluding (a) dispositions resulting from Casualty Events, and (b) sales and other dispositions of Property pursuant to Sections 9.11(a)-(e).

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

“Availability Period” means the period from and including the Effective Date to but excluding the Maturity Date.

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

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

“Bank Products” means any of the following bank services: (a) commercial credit cards, (b) stored value cards, and (c) treasury or cash management services (including, without limitation, deposit accounts, funds transfers, automated clearinghouse services, auto-borrow services, zero balance accounts, returned check concentration, controlled disbursement services, lockboxes, account reconciliation and reporting service, trade finance services, overdraft protection, and interstate depository network services).

“Bank Products Provider” means any Lender or Affiliate of a Lender that provides Bank Products to the Borrower or any other Loan Party; provided, that such Lender or Affiliate must have delivered a Secured Party Designation Notice to the DIP Agent.

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

“**Bankruptcy Court**” shall have the meaning assigned to such term in the recitals of this Agreement.

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

“**Bid Deadline**” shall have the meaning assigned to such term in Section 8.24(g).

“**Bid Procedures**” shall have the meaning assigned to such term in Section 8.23(f).

“**Bid Procedures and Sale Motion**” shall have the meaning assigned to such term in Section 8.23(f).

“**Bid Procedures Order**” shall have the meaning assigned to such term in Section 8.23(f).

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

“**Borrower Materials**” has the meaning assigned to such term in Section 8.01.

“**Borrower Notice**” has the meaning assigned to such term in the definition of “Flood Zone Documentation”.

“**Borrowing**” means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Dallas, Texas are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which banks are open for dealings in dollar deposits in the London interbank market.

“**Capital Expenditures**” means, in respect of any Person, for any period, the aggregate (determined without duplication) of all expenditures and costs that are capitalized on the balance sheet of such Person in accordance with GAAP, exclusive of, with respect to each Loan Party, expenditures and costs incurred by such Loan Party to the extent that an unaffiliated third Person has provided such Loan Party with funds to pay such expenditures and costs prior to incurrence.

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“Capital Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, recorded as capital leases on the balance sheet of the Person liable (whether contingent or otherwise) for the payment of rent thereunder.

“Carve-Out” has the meaning assigned to such term in the DIP Orders, as applicable; *provided, however*, that notwithstanding any other provision of the DIP Orders or the Loan Documents to the contrary, in no event shall the Carve-Out apply to amounts held in the Letter of Credit Account.

“Case Milestones” shall have the meaning assigned to such term in Section 8.23.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one year from the date of acquisition thereof, (b) commercial paper maturing no more than six months from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody’s, (c) certificates of deposit maturing no more than one year from the date of creation thereof issued by any Lender or commercial banks incorporated under the laws of the United States, having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of “A” or better by a nationally recognized rating agency, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

“Cash Management Order” has the meaning assigned to such term in Section 6.01(f).

“Casualty Event” means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of the Loan Parties or any of their Subsidiaries.

“Change in Control” means:

(a) the Sponsors and their Affiliates, collectively, shall cease to beneficially own and control, directly or indirectly, Equity Interests in the General Partner representing a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than the Sponsors and their respective Affiliates of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in the General Partner;

(c) the General Partner shall cease to be the sole general partner of the Borrower, with substantially the same (or more expansive) powers to manage the Borrower as are granted to the General Partner under the Organization Documents of the Borrower as of the Effective Date;

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(d) the Borrower shall cease to beneficially own and control, directly or indirectly, all of the Equity Interests in each of the other Loan Parties; or

(e) within any period of twelve (12) consecutive calendar months, individuals who were neither (i) members of the board of managers, or similar governing body, of the General Partner on the first day of such period, (ii) persons who were appointed or nominated by such persons, nor (iii) persons who were appointed or nominated by a Sponsor (or an Affiliate of a Sponsor) shall constitute a majority of the members of the board of managers, or similar governing body, of the General Partner.

For the avoidance of doubt, neither proposed entry into a “stalking horse” Qualified APA, entry into (but not consummation of the transactions pursuant to) a Qualified APA in accordance with the Bid Procedures Order nor the filing or proposal of (but not consummation of the transactions pursuant to) an Acceptable Plan shall constitute a Change in Control.

“**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; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Chapter 11 Cases**” shall have the meaning given to such term in the recitals to this Agreement.

“**Chapter 11 Plan**” means a plan of reorganization or liquidation filed in any of the Chapter 11 Cases under Section 1121 of the Bankruptcy Code.

“**Claim**” means all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term “Claim” shall include the items described in the definition of “Claim” in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under any other Bankruptcy Law, all claims or causes of action arising under the

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Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or Uniform Voidable Transactions Act as in effect in any state, and all rights of contribution, subrogation, exoneration or indemnity.

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

“Collateral” means any and all Property of the Loan Parties or any other Person that is secured by a Lien under one or more Security Instruments.

“Commitment” means, (a) with respect to each applicable Lender, the Term Commitment and/or the DIP LC Commitment of such Lender, as the context may require, and (b) with respect to all Lenders, the aggregate Term Commitments and/or the aggregate DIP LC Commitments of all Lenders, as the context may require.

“Commitment Letter” means that certain Commitment Letter, dated March [31], 2019, by and among the Borrower, certain funds or accounts managed by Solus Alternative Asset Management LP, and certain funds or accounts managed by Sound Point Capital Management, LP, as may be amended, restated, supplement and/or otherwise modified from time to time.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. 1, et seq.), as amended from time to time, any successor statute, and any rule, regulation, or order of the Commodities Futures Trading Commission (or the application or official interpretation of any thereof).

“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.

“Consolidated Subsidiaries” means each Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Borrower in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

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

“Credit Facility” means, individually and collectively as the context may require, the DIP Term Loan facility, Letter of Credit facility and Roll-Up Loan facility established under this Agreement.

“Debt Issuance” means any issuance by a Loan Party or its Subsidiaries of Indebtedness for borrowed money to any Person that is not a Loan Party.

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“Debt Issuance Proceeds” means with respect to any Debt Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Debt Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Debt Issuance.

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

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans within three (3) Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the DIP Agent, any Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend or expect to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after request by the DIP Agent or the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) otherwise failed to pay over to the DIP 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 the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not become a Defaulting Lender solely as a result of the acquisition or maintenance of an ownership interest in such Lender or Person controlling such Lender or the exercise of control over a Lender or Person controlling such Lender by a Governmental Authority or an instrumentality thereof.

“Delayed Draw DIP Funding Date” shall mean any Business Day specified in a Notice of Borrowing delivered by the Borrower to the DIP Agent and on which the conditions set forth in Section 6.02 are satisfied or waived in accordance with the terms hereof and the Delayed Draw DIP Term Loans are made by the Lenders holding Delayed Draw Term Commitments pursuant to Section 2.01(b).

“Delayed Draw DIP Term Loan” shall mean the loan made by the Lenders to the Borrower on the Delayed Draw DIP Funding Date pursuant to Section 2.01(b)

“Delayed Draw Term Commitment” means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the Delayed Draw DIP Term Loans to the Borrower hereunder on the Delayed Draw DIP Funding Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from

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time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's Delayed Draw Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading "Delayed Draw Term Commitment", which shall total \$42,500,000 in the aggregate for all Lenders.

"DIP LC Commitment" means (a) with respect to each applicable Lender, the commitment of such Lender to make a portion of the DIP LC Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender's DIP LC Commitment as of the Effective Date is set forth on Annex I hereto under the heading "DIP LC Commitment", which shall total \$55,000,000 in the aggregate for all Lenders.

"DIP LC Loans" means the loans made by the Lenders to the Borrower on the Effective Date pursuant to Section 2.01(c).

"DIP Order" means, collectively, the Interim DIP Order and, from and after its entry by the Bankruptcy Court, the Final DIP Order.

"DIP Term Loans" shall mean, collectively, the Initial DIP Term Loans, the Delayed Draw DIP Term Loans, and the DIP LC Loans.

"Disqualified Capital Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the earlier of (a) the Maturity Date and (b) the date on which there are no Loans, LC Exposure or other obligations hereunder outstanding and all of the Commitments are terminated.

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

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

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

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

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

“Effective Date” means the date on which the conditions specified in Section 6.01 are satisfied (or waived in accordance with Section 12.02) and the Initial DIP Term Loans and the DIP LC Loans have been funded.

“Embargoed Person” has the meaning assigned to such term in Section 9.22.

“Environmental Laws” means any and all Governmental Requirements pertaining in any way to health, safety, the environment, the preservation or reclamation of natural resources, or the management, Release or threatened Release of any Hazardous Materials, in effect in any and all jurisdictions in which the Borrower or any Subsidiary is conducting, or at any time has conducted, business, or where any Property of the Borrower or any Subsidiary is located, including, the Oil Pollution Act of 1990 (**“OPA”**), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (**“CERCLA”**), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (**“RCRA”**), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection Governmental Requirements.

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

“EP Contract” means that certain Gas Gathering and Processing Agreement (Portions of Atascosa, Dimmit and La Salle Counties) dated February 18, 2014, entered into between Frio LP and EP Energy E&P Company, L.P., a Delaware limited partnership, as in effect on the Effective Date.

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

“Equity Issuance” means (a) any issuance by the Borrower of shares of its Equity Interests to any Person that is not a Loan Party (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Loan Party into any Loan Party or any Subsidiary thereof. The term “Equity Issuance” shall not include (A) any Asset Sale or (B) any Debt Issuance.

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“Equity Issuance Proceeds” means (a) with respect to any Equity Issuance, all cash proceeds and Cash Equivalents received by the Borrower and its Subsidiaries from such Equity Issuance (other than from any other Loan Party) after payment of, or provision for, all underwriter fees and expenses, SEC and blue sky fees, printing costs, fees and expenses of accountants, lawyers and other professional advisors, brokerage commissions and other out-of-pocket fees and expenses actually incurred in connection with such Equity Issuance, and (b) with respect to existing Equity Interests, cash contributions made to the Borrower from the holders of its Equity Interests on account of common equity.

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

“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Borrower or a Subsidiary would be deemed to be a “single employer” within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the Code.

“ERISA Event” means (a) a “Reportable Event” described in section 4043 of ERISA and the regulations issued thereunder, (b) the withdrawal of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan during a plan year in which it was a “substantial employer” as defined in section 4001(a)(2) of ERISA, (c) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under section 4041 of ERISA, (d) the institution of proceedings to terminate a Plan by the PBGC, (e) receipt of a notice of withdrawal liability pursuant to section 4202 of ERISA or (f) any other event or condition which could reasonably be expected to constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

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

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

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

“Excepted Liens” means: (a) Liens for Taxes, assessments or other governmental charges or levies (other than Liens imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA) that arose prior to the Petition Date and which were, as of the Petition Date, not delinquent or which were being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens arising by operation of law in connection with workers’ compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) to the extent arising by operation of law, statutory landlord’s liens, operators’, interest owners’, vendors’, carriers’, warehousemen’s,

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repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising by operation of law in the ordinary course of business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) subject to the Cash Management Order, Liens arising solely by virtue of customary deposit account agreements with the creditor depository institution or any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, *provided* that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Borrower or any of its Subsidiaries to provide collateral to the depository institution or any other Person (other than the Secured Parties pursuant to the Security Instruments); (e) zoning and land use requirements, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations affecting, and minor irregularities or deficiencies in title to, any real Property of the Borrower or any Subsidiary that do not secure Indebtedness and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Subsidiary or materially impair the value of such Property subject thereto; (f) to the extent in accordance with the Approved Budget (subject to Permitted Variances), Liens on cash or securities pledged to secure performance of tenders, surety, appeal and supersedeas bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations, obligations in respect of workers' compensation, unemployment insurance or other forms of government benefits or insurance and other obligations of a like nature incurred in the ordinary course of business; (g) Liens, titles and interests of lessors of Property leased by such lessors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such leases, and Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the Borrower's or such Subsidiary's leasehold interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such leases; (h) Liens, titles and interests of licensors of software and other intangible Property licensed by such licensors to the Borrower or any Subsidiary, restrictions and prohibitions on encumbrances and transferability with respect to such Property and the Borrower's or such Subsidiary's interests therein imposed by such licenses, and Liens and encumbrances encumbering such licensors' titles and interests in such Property and to which the Borrower's or such Subsidiary's license interests may be subject or subordinate, in each case, whether or not evidenced by UCC financing statement filings or other documents of record; *provided* that such Liens do not secure Indebtedness of the Borrower or any Subsidiary and do not encumber Property of the Borrower or any Subsidiary other than the Property that is the subject of such licenses; and (i) to the extent arising prior to the Petition Date, judgment and attachment Liens not giving rise to an Event of Default, *provided* that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired

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and no action to enforce such Lien has been commenced. Any Lien described in clauses (a) through (d) shall remain an “Excepted Lien” only for so long as (A) the appropriate Loan Party shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, (B) the appropriate Loan Party shall maintain adequate reserves related to such Lien to the extent required by GAAP, and (C) such Lien shall in all respects be subject and subordinate in priority to the Liens created and evidenced by the Security Instruments, except if and to the extent that the Governmental Requirements creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Liens created and evidenced by the Security Instruments; *provided* that no intention to subordinate the first priority Liens granted in favor of the DIP Agent for the benefit of the Secured Parties pursuant to the Security Instruments is to be hereby implied or expressed by the permitted existence of such Excepted Liens.

“**Excluded Taxes**” means, with respect to the DIP Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower or any Guarantor hereunder or under any other Loan Document, (a) Taxes (i) imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower or any Guarantor is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 5.04(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with Section 5.03(f), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 5.03(a) or Section 5.03(c), and (d) any United States federal withholding taxes imposed by FATCA.

“**Executive Order**” has the meaning assigned to such term in Section 7.26(a).

“**Exigent Circumstance**” means the existence of any of the following events or conditions, in each case as determined by DIP Agent (at the direction of Required Lenders acting reasonably and in good faith): (i) any material portion of Collateral threatens to decline speedily in value; (ii) DIP Agent (at the direction of Required Lenders acting reasonably) believes that fraud, concealment, material misrepresentation, theft or the withholding or fraudulent removal of Collateral or proceeds of a material portion of Collateral has occurred; (iii) to the extent constituting an Event of Default, a Person (other than a Secured Party in their capacity as such) repossesses or forecloses upon any material portion of Collateral, or (iv) any other event or circumstance occurs or exists that materially and imminently threatens the value or liquidation prospects of any material portion of Collateral, the enforceability or priority of the Liens securing the Secured Obligations or the collectability thereof.

“**Exit Fee**” has the meaning assigned to such term in Section 3.05(e).

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“Extraordinary Receipts” shall mean the Net Cash Proceeds received by any Loan Party not in the ordinary course of business (and not consisting of proceeds from the sale of inventory sold in the ordinary course of business), including, without limitation, (a) proceeds under any insurance policy on account of damage or destruction of any assets or property of such Loan Party (that are not Casualty Events), (b) indemnity payments, (d) foreign, United States, state or local tax refunds, (c) pension plan reversions and (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action.

“FATCA” means sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations or official interpretations thereof.

“FCPA” means the Foreign corrupt Practices Act of 1977, as amended.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Flood Insurance” means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Area in a community participating in the National Flood Insurance Program.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the DIP Agent from three Federal funds brokers of recognized standing selected by it.

“FEMA” means the Federal Emergency Management Agency, an agency of the United States Department of Homeland Security that administers the National Flood Insurance Program.

“Final DIP Order” means a Final Order of the Bankruptcy Court in substantially the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a Final Order and to authorize and approve the Roll-Up in the full amount set forth on Schedule 2.01(d) and such other modifications as are satisfactory in form and substance to the DIP Agent and the Required Lenders in their discretion), which order shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the written consent of the DIP Agent or the Required Lenders.

“Final Order” means an order or judgment of the Bankruptcy Court as entered on its docket that has not, in whole or in part, been reversed, vacated, modified, amended or stayed pursuant to any applicable Federal Rule of Bankruptcy Procedure or any other applicable rule of civil or appellate procedure, and as to which the time to appeal, petition for certiorari, or seek re-argument or rehearing has expired, or as to which any right to appeal, petition for certiorari or seek re-argument or rehearing has been waived in writing in a manner satisfactory to the parties in interest, or if a notice of appeal, petition for certiorari, or motion for re-argument or rehearing was timely filed, the order or judgment has been affirmed by the highest court to which the order

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or judgment was appealed or from which the re-argument or rehearing was sought, or a certiorari has been denied, and the time to file any further appeal or to petition for certiorari or to seek further re-argument has expired.

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

“Financial Statements” means the Borrower and its Consolidated Subsidiaries’ audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for the fiscal year ending December 31, 2018, setting forth in each case in comparative form the figures for the previous fiscal year.

“Flood Insurance” means, for any owned real Property improved by one or more buildings located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets or exceeds the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in commercially reasonable amounts at least up to the maximum policy limits set under the National Flood Insurance Program.

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

“Flood Zone Documentation” means with respect to any fee interest in any real property improved by a Building or Mobile (Manufactured) Home located in the United States of any Loan Party, to the extent required to comply with Flood Laws: (1) a completed standard flood hazard determination form, (2) if the real property is located in a special flood hazard area, a notification to the applicable Loan Party (**“Borrower Notice”**) and, if applicable, notification to such Loan Party that flood insurance coverage under the National Flood Insurance Program is not available because the community does not participate in the National Flood Insurance Program, (3) documentation evidencing the applicable Loan Party’s receipt of the Borrower Notice and (4) if the Borrower Notice is required to be given and flood insurance is available in the community in which the real property is located, evidence of applicable flood insurance in such form, on such terms and in such amounts as required by the Flood Insurance Laws and as required by the DIP Agent.

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

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

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

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

“**General Partner**” means Southcross Energy Partners GP, LLC, a Delaware limited liability company and the sole general partner of the Borrower.

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

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

“**Guarantors**” means, collectively, each Subsidiary of the Borrower.

“**Guaranty and Collateral Agreement**” means that Debtor-in-Possession Guaranty and Collateral Agreement executed by the Borrower and the Guarantors in substantially the form of Exhibit E granting and confirming security interests in certain Collateral and unconditionally guarantying on a joint and several basis, payment of the Secured Obligations, as the same may be amended, modified or supplemented from time to time.

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

“**Hedging Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement, whether exchange traded, “over-the-counter” or otherwise, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (including any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act);

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provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Borrower or the Subsidiaries shall be a Hedging Agreement.

“Hedging Termination Value” means, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

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

“Hydrocarbons” means oil, gas, casinghead gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all products refined or separated therefrom.

“Immaterial Real Property” means any real Property designated by the Borrower as Immaterial Real Property, if and for so long as the fair market value (as reasonably determined by the Borrower and approved by the Required Lenders) of such Immaterial Real Property, together with all other Immaterial Real Property so designated by the Borrower, does not exceed \$1,000,000 at any time.

“Indebtedness” means, for any Person, the sum of the following (without duplication): (a) all obligations of such Person for borrowed money or evidenced by bonds, bankers’ acceptances, debentures, notes or other similar instruments; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services, except (i) trade accounts payable of such Person arising in the ordinary course of business if and to the extent that such trade accounts payable are not past due by more than ninety (90) days or that are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established or are subject to an offset in favor of such Person as a result of accounts receivable owed to such Person and (ii) non-cash purchase price adjustments or non-cash earnouts and the portion of any cash purchase price adjustments or cash earnouts that is not determinable; (d) all obligations under Capital Leases; (e) all obligations under Synthetic Leases; (f) all Indebtedness (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Indebtedness is assumed by such Person, *provided, however*, that the amount of such Indebtedness of any Person described in this clause (f) shall, for purposes of this Agreement, be deemed to be equal to the

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lesser of (i) the aggregate unpaid amount of such Indebtedness or (ii) the fair market value of the Property encumbered; (g) all Indebtedness (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Indebtedness (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Indebtedness and the maximum stated amount of such guarantee or assurance against loss; (h) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Indebtedness or Property of others; (i) obligations to pay for electricity, natural gas, other Hydrocarbons and other commodities under contracts having an initial term in excess of one (1) year even if such electricity, natural gas, other Hydrocarbons, and other commodities are not actually taken, received or utilized by such Person; (j) any Indebtedness of a partnership for which such Person is liable either by agreement, by operation of law or by a Governmental Requirement but only to the extent of such liability; and (k) Disqualified Capital Stock.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

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

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

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

“Initial DIP Term Loan” shall mean the loan made by the Lenders on the Effective Date pursuant to Section 2.01(a).

“Initial Roll-Up Loans” has the meaning given to such term in Section 2.01(d).

“Initial Term Commitment” means (a) with respect to each Lender, the commitment of such Lender to make a portion of the Initial DIP Term Loans to the Borrower hereunder on the Effective Date in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I hereto as of the date hereof, as such amount may be increased, reduced or otherwise modified at any time or from time to time and recorded on the Register pursuant to the terms hereof and (b) with respect to all Lenders, the aggregate commitments of all Lenders to make such Loans. The initial amount of each Lender’s Initial Term Commitment as of the Effective Date is set forth on Annex I hereto under the heading “Initial Term Commitment”, which shall total \$30,000,000 in the aggregate for all Lenders.

“Intellectual Property” shall have the meaning assigned to such term in Section 7.16(d).

“Interest Election Request” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04, substantially in the form of Exhibit C.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last Business Day of each calendar month and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, following an Event of Default and during the continuance thereof, upon demand by the Required Lenders.

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“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect in its applicable Notice of Borrowing or Interest Election Request; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) no Interest Period for any Borrowing shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim DIP Order” means an interim order authorizing and approving, among other things, (a) the DIP Facilities and the extensions of credit thereunder including the incurrence by the Loan Parties of secured indebtedness in accordance with this Agreement, (b) the form of this Agreement and the other Loan Documents, (c) the granting of liens and claims in favor of the DIP Agent and Lenders, (d) the payment by the Loan Parties of the fees contemplated by this Agreement, (e) the provision of adequate protection to the Prepetition Term Lenders and the Prepetition Revolving Lenders in a manner satisfactory to the Required Lenders, (f) the other obligations of the Loan Parties under this Agreement and the other Loan Documents, and (g) such other matters as are usual and customary for orders of this kind, which order shall be in form and substance satisfactory to the Required Lenders in all respects and shall not have been vacated, reversed, modified or stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof but only with the prior written consent of the DIP Agent or the Required Lenders.

“Investment” means, for any Person: (a) the acquisition (whether for cash, Property, services or securities or otherwise) of Equity Interests of any other Person (including, without limitation, any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such short sale); (b) the making of any deposit with, or advance, loan or capital contribution to, assumption of Indebtedness of, purchase or other acquisition of any other Indebtedness or equity participation or interest in, or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days representing the purchase price of inventory or supplies sold by such Person in the ordinary course of business); (c) the purchase or acquisition (in one or a series of transactions) of Property of another Person that constitutes a business unit or (d) the entering into of any guarantee of, or other contingent obligation (including the deposit of any Equity Interests to be sold) with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person.

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

“**Issuing Banks**” means, individually or collectively as the context requires, each of Wells Fargo, RBC and UBS AG, in their respective capacities as issuers of Letters of Credit hereunder (but limited, in the case of Wells Fargo, to Prepetition Letters of Credit deemed issued hereunder (and all amendments, replacements and extensions thereof)), their respective successors in such capacity as provided in Section 2.07(i), and, if requested by the Borrower and consented to by the DIP Agent (acting at the direction of the Required Lenders), any other Person who accepts such appointment and executes a joinder to this Agreement, in form and substance reasonably satisfactory to the Borrower and the DIP Agent, to act as an Issuing Bank under this Agreement. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“**LC Cash Collateralization Amount**” means an amount equal to 103% multiplied by the amount of all LC Obligations existing at such time.

“**LC Commitment**” means, with respect to each Issuing Bank, the LC Commitment of such Issuing Bank as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement.

“**LC Disbursement**” means a payment made by any Issuing Bank pursuant to a Letter of Credit.

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

“**LC Obligations**” means, at any time, the aggregate maximum amount then available to be drawn under all issued and outstanding Letters of Credit, as calculated in accordance with Section 2.07(l).

“**LC Participant**” shall have the meaning assigned to such term in Section 2.07(d).

“**LC Sublimit**” means, at any time, \$52,597,087.38.

“**Lender Counsel**” means Willkie Farr & Gallagher LLP.

“**Lender Financial Advisors**” means Houlihan Lokey, Inc.

“**Lender Professionals**” means the Lender Financial Advisors and the Lender Counsel.

“**Lenders**” means the Persons listed on Annex I and any Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

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“**Letter of Credit**” means any standby letter of credit issued (or deemed issued) pursuant to this Agreement or any Letter of Credit Agreement, including without limitation, the Prepetition Letters of Credit deemed issued hereunder upon the Effective Date.

“**Letter of Credit Account**” means a blocked, non-interest bearing trust account maintained by the DIP Agent in which the proceeds of the DIP LC Loans shall be deposited and held as provided in this Agreement. Neither the Borrower nor any of the other Loan Parties shall have any property interest of any kind in the Letter of Credit Account or the funds held therein.

“**Letter of Credit Agreements**” means all letter of credit applications and other agreements (including any amendments, modifications or supplements thereto) submitted by the Borrower, or entered into by the Borrower, with any Issuing Bank relating to any Letter of Credit.

“**Letter of Credit Deposit Amount**” means, at any time, the total amount on deposit in the Letter of Credit Account at such time that is then available for disbursement by the Issuing Banks in the event of an LC Disbursement as provided in Section 2.07(e).

“**Letter of Credit Withdrawal Notice**” means a notice delivered by the Borrower signed by a Responsible Officer to the DIP Agent requesting a withdrawal of funds from the Letter of Credit Account, which notice shall set forth (i) the date of such withdrawal, (ii) the amount of such withdrawal, (iii) the identity of the customers and/or suppliers whose obligations will be cash collateralized and (iv) other information requested by the DIP Agent (at the direction of the Required Lenders) that is necessary or appropriate (as determined by the Required Lenders) to determine pro forma compliance with the Loan Documents.

“**Lewis Contract**” means that certain Gas Transportation, Processing and Purchase Agreement dated October 1, 2012, by and among Southcross Marketing Company Ltd., Lewis Petro Properties, Inc., and BP America Production Company, as amended.

“**LIBO Rate**” means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum (rounded to the nearest 1/100th of 1%) determined by the DIP Agent by reference to the ICE Benchmark Administration London Interbank Offered Rate for deposits in Dollars (as set forth on the applicable Bloomberg screen page or by or such other commercially available source providing such quotations as may be designated by the DIP Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the LIBO Rate shall be the interest rate per annum determined by the DIP Agent to be the average of the rates per annum at which the DIP Agent is offered deposits in Dollars by major banks in the London interbank market in London, England at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period. Notwithstanding anything to the contrary contained in this definition, the LIBO Rate shall be deemed not to be less than one percent (1.0%) at any time.

“**Lien**” means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law,

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statute or contract, and whether such obligation or claim is fixed or contingent, and including but not limited to the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations. For the purposes of this Agreement, the Borrower and its Subsidiaries shall be deemed to be the owner of any Property which they have acquired or hold subject to a conditional sale agreement, or leases under a financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person in a transaction intended to create a financing.

“**Loan**” or “**Loans**” means the DIP Term Loans and the Roll-Up Loans.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Letter of Credit Agreements, the Letters of Credit, the Fee Letters, and the Security Instruments.

“**Loan Parties**” and “**Loan Party**” mean, collectively or individually as the context requires, the Borrower and the Guarantors.

“**Material Adverse Change**” means any circumstance or event that has had a Material Adverse Effect.

“**Material Adverse Effect**” means any event, condition or circumstance (other than as a result of (i) the commencement of the Chapter 11 Cases by the Loan Parties, the events and conditions related and/or leading up thereto and the effect of bankruptcy conditions in the industry in which the Borrower operates as of the Effective Date, each as disclosed in materials provided to the Prepetition Term Lenders prior to the Petition Date or in the “first day” motions or declarations filed in the Chapter 11 Cases, and (ii) any defaults under agreements that have no effect under the terms of the Bankruptcy Code as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the Chapter 11 Cases) that, individually or in the aggregate, (a) has had or would reasonably be expected to have, a material adverse effect on the business, operations, properties, assets or condition of the Borrower and its Subsidiaries, taken as a whole or (b) has resulted in, or would reasonably be expected to result in, a material impairment of the validity or enforceability of, or a material impairment of the material rights, remedies or benefits available to the Lenders, the Issuing Banks, the DIP Agent or the collateral agent under any Loan Document.

“**Material Contracts**” means, collectively, (a) the EP Contract, (b) the Lewis Contract, (c) the Services Agreements, (d) the Shared Services Agreement, and (e) each other contract for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Material Indebtedness**” means, to the extent incurred on or after the Petition Date, Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount equals or exceeds \$4,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

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“Material Real Property” means any real Property which is not Immaterial Real Property.

“Maturity Date” means the date that is the earliest to occur of: (a) the Scheduled Maturity Date; (b) the effective date of any confirmed Acceptable Plan or any other Chapter 11 Plan of the Loan Parties; (c) the date on which all or substantially all of the assets of the Loan Parties are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code and (d) the acceleration of the maturity of the Loans upon the occurrence of any Event of Default.

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

“Mortgage” means each mortgage, deed of trust or any other document (if any) creating and/or evidencing a Lien on real or immovable Property and other Property in favor of the DIP Agent for the benefit of the Secured Parties, which shall be in a form reasonably satisfactory to the DIP Agent, as the same may be amended, modified, supplemented or restated from time to time in accordance with the Loan Documents.

“Mortgaged Property” means any real Property owned by the Borrower or any of its Subsidiaries that is subject to a Lien pursuant to the DIP Orders and/or a Mortgage.

“National Flood Insurance Program” means the program created by the United States Congress pursuant to the Flood Insurance Laws, that mandates the purchase of flood insurance to cover real property improvements located in Special Flood Hazard Areas in participating communities and provides protection to property owners through a federal insurance program.

“Net Cash Proceeds” means, for any event requiring a repayment of Loans pursuant to Section 3.04(b), the gross cash proceeds (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) from such event, net of reasonable attorneys’ fees, accountants’ fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such event (other than any Lien pursuant to a Security Instrument) and other customary fees and expenses actually incurred in connection therewith, and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“Net Sale Proceeds” means for any sale or other disposition of Property pursuant to an Asset Sale, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of (a) reasonable transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and transfer taxes arising therefrom), (b) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than the Secured Obligations) which is

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permitted hereunder and which is secured by the respective Property which was sold or otherwise disposed of, (c) the estimated net marginal increase in income taxes which will be payable by the Borrower or any Subsidiary with respect to the fiscal year of the Borrower in which the Asset Sale occurs as a result of such Asset Sale, and (d) the amount of all reserves required to be maintained by the Borrower or any Subsidiary in accordance with GAAP for any potential indemnity obligations that may be required to be made by the Borrower or any Subsidiary of as a result of such Asset Sale; *provided, however*, that (i) such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the DIP Agent a certificate signed by a Responsible Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than thirteen (13) months following the date of the respective Asset Sale), the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Borrower or any Subsidiary shall constitute Net Sale Proceeds on such date received by the Borrower and/or any Subsidiary from such Asset Sale, and (ii) at such time as the Borrower and the Subsidiaries are no longer required to maintain any indemnity reserves in accordance with GAAP as a result of any Asset Sale, the amount (if any) by which such reserved amount in respect of such Asset Sale exceeds the actual amount of indemnity payments made by the Borrower or any Subsidiary for which such reserves were required to be maintained in respect of such Asset Sale shall constitute Net Sale Proceeds at such time, in each case, to the extent included in the Approved Budget (subject to Permitted Variances).

“**Notes**” means the promissory notes of the Borrower described in Section 2.02(d) and being substantially in the form of Exhibit A, together with all amendments, modifications, replacements, extensions and rearrangements thereof.

“**Notice of Borrowing**” means a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the DIP Agent.

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

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non US 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 Lender or Issuing Bank, Taxes imposed as a result of a present or former connection between such Lender or Issuing Bank and

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the jurisdiction imposing such Tax (other than connections arising from such Lender or Issuing Bank 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 or documentary taxes or any other excise or Property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 5.04).

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

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

“Partnership Agreement” means that certain Third Amended and Restated Limited Partnership Agreement of the Borrower dated as of August 4, 2014, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Payment in Full” means the Secured Obligations hereunder have been indefeasibly paid in full in cash and the Commitments have been reduced to zero (0) (other than (i) contingent indemnification obligations for which no Claim has been asserted and (ii) any Letters of Credit outstanding that (A) have been cash collateralized pursuant to Section 2.07(j)(iii)(B) or (B) have had other arrangements made with respect to them that are reasonably satisfactory to the applicable Issuing Bank).

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

“Permitted Variances” has the meaning assigned to such term in Section 9.01.

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

“Petition Date” has the meaning assigned to such term in the recitals to this Agreement.

“Plan” means any employee pension benefit plan, as defined in section 3(2) of ERISA, which (a) is currently or hereafter sponsored, maintained or contributed to by the Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six (6) calendar years preceding the date hereof, sponsored, maintained or contributed to by the Borrower or a Subsidiary or an ERISA Affiliate.

“Platform” has the meaning assigned to such term in Section 8.01.

“Prepetition Agent” means, individually or collectively as the context may require, the Prepetition Revolving Agent and the Prepetition Term Agent.

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“Prepetition Collateral” means the "Collateral" under (and as such term is defined in) the Prepetition Loan Agreements.

“Prepetition Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition LC Issuers” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Lenders” means, individually or collectively as the context may require, the Prepetition Revolving Lenders and the Prepetition Term Lenders.

“Prepetition Letters of Credit” means, collectively, letters of credit issued by the Prepetition LC Issuers under the Prepetition Revolving Loan Facility, which, as of the Effective Date, were issued and undrawn, and which are listed on Annex II hereto.

“Prepetition Loan Facility” means, individually or collectively as the context may require, the Prepetition Revolving Facility and the Prepetition Term Facility.

“Prepetition Obligations” means, collectively, (i) the “Secured Obligations” as such term is defined in the Prepetition Revolving Loan Agreement and (ii) the “Secured Obligations” as such term is defined in the Prepetition Term Loan Agreement.

“Prepetition Revolving Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Lenders” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loan Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Revolving Loans” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Secured Parties” means the “Secured Parties” as such term is defined in the Prepetition Credit Agreements.

“Prepetition Term Agent” has the meaning assigned to such term in the recitals to this Agreement.

“Prepetition Term Lenders” has the meaning assigned to such term in the recitals to this Agreement.

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“**Prepetition Term Loan Agreement**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prepetition Term Loan Facility**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prepetition Term Loans**” has the meaning assigned to such term in the recitals to this Agreement.

“**Prime Rate**” means, for any day, the prime lending rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, “**Prime Rate**” shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the DIP Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Prime Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

“**Professional Fees**” has the meaning assigned to such term in the DIP Orders.

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible (including, without limitation, cash, securities, accounts, contract rights and, with respect to any Person, Equity Interests or other ownership interests of any other Person), whether now in existence or owned or hereafter acquired.

“**Proposed Budget**” has the meaning assigned to such term in Section 8.01(q).

“**Public Lender**” has the meaning assigned to such term in Section 8.01.

“**Purchase Money Indebtedness**” means Indebtedness, the proceeds of which are used to finance the acquisition, construction, installation, transport and/or improvement of inventory, equipment or other Property in the ordinary course of business.

“**Qualified APA**” means an asset purchase agreement, stock purchase agreement or any similar agreements or documents in respect of a Qualified Sale Transaction.

“**Qualified Sale Transaction**” means a Section 363 Sale which provides for Payment in Full concurrently with the consummation of such sale and is in form and substance reasonably satisfactory to the Required Lenders.

“**RBC**” means Royal Bank of Canada - New York Branch.

“**Recovery Event**” means the receipt by the Borrower or any Subsidiary of any cash insurance proceeds or condemnation awards payable by reason of a Casualty Event.

“**Redemption**” means with respect to any Indebtedness, the repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the

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segregation of funds with respect to any of the foregoing) of such Indebtedness. “**Redeem**” has the correlative meaning thereto.

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

“**Regulation D**” means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

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

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

“**Remedial Work**” has the meaning assigned to such term in Section 8.11(a).

“**Required Lenders**” means, at any time while no Credit Exposure is outstanding one or more Lenders having greater than fifty percent (50%) of the aggregate Commitments; and at any time while any Credit Exposure is outstanding, one or more Lenders holding greater than fifty percent (50%) of the total Credit Exposure (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(d)); *provided* that the Commitments and the principal amount of the total Credit Exposure of the Defaulting Lenders (if any) shall be excluded from the determination of Required Lenders.

“**Responsible Officer**” means, as to any Person, the Chief Executive Officer, the President, any Financial Officer or any Vice President of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrower or of the General Partner acting on behalf of the Borrower.

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

“**Roll-Up**” has the meaning given to such term in Section 2.01(d).

“**Roll-Up Loans**” has the meaning given to such term in Section 2.01(d).

“**Sanctions**” has the meaning assigned to such term in Section 7.26(d).

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

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“Scheduled Maturity Date” means [●]¹; *provided* that the Borrower shall have the right to extend the Scheduled Maturity Date for a period of ninety (90) days subject to satisfaction of the following conditions precedent: (i) the Borrower shall have provided the DIP Agent with not less than five (5) Business Days’ prior written notice of its request for such extension; (ii) the Required Lenders shall have consented to such extension; and (iii) the Borrower shall have paid to the DIP Agent for the benefit of each Lender that consents to the extension within four (4) Business Days of the Borrower’s request, an extension premium in an amount equal to 1.00% of such Lender’s Loans then outstanding (which premium shall be paid in cash unless the Required Lenders in their sole discretion elect that such premium be paid-in-kind).

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

“Section 363 Sale” means a sale of all or substantially all of the assets and business of the Loan Parties conducted pursuant to Section 363 of the Bankruptcy Code (it being understood, for the avoidance of doubt, that the Loan Parties may sell Properties listed on Schedule 9.11 pursuant to Section 9.11(j) and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii)).

“Secured Obligations” means any and all obligations of and amounts owing or to be owing by the Borrower, any Subsidiary or any other Loan Party (whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising): (a) to the DIP Agent, any Issuing Bank, any trustee or any Lender under any Loan Document; (b) [reserved]; (c) to any Bank Products Provider in respect of any Bank Products; and (d) all renewals, extensions and/or rearrangements of any of the above. For the avoidance of doubt, the “Secured Obligations” shall include all Loans, Initial DIP Term Loans, Delayed Draw DIP Term Loans, Roll-Up Loans, and all Fees hereunder or under any other Loan Document.

“Secured Parties” means, collectively, the DIP Agent, each Issuing Bank, each Lender, and each Bank Products Provider.

“Secured Party Designation Notice” means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit J.

“Security Instruments” means the DIP Orders, the Guaranty and Collateral Agreement, the Mortgages, the other agreements, instruments or certificates described or referred to in Schedule 1.02(a), and any and all other agreements, instruments, consents, or certificates now or hereafter executed and delivered by the Borrower or any other Person (other than Bank Products agreements or participation or similar agreements between any Lender and any other lender or creditor with respect to any Secured Obligations pursuant to this Agreement) in connection with, or as security for the payment or performance of the Secured Obligations, the Notes, this Agreement, or reimbursement obligations under the Letters of Credit, as such agreements may be amended, modified, supplemented or restated from time to time.

¹ 6 months from the petition date.

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“Services Agreements” means, collectively, (a) that certain Transportation Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between Southcross NGL Pipeline Ltd. and Frio LaSalle Pipeline, LP, (b) that certain Gas Gathering and Treating Agreement dated and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, LP, and (c) that certain Master Compression Services Agreement dated as of May 7, 2015 and effective as of May 1, 2015, between FL Rich Gas Services, LP and Frio LaSalle Pipeline, L.P.

“Shared Services Agreement” means that certain Shared Services Agreement, dated March 31, 2019, among the Borrower, Southcross Energy GP LLC, Southcross Holdings and Southcross Holdings GP, LLC.

“Southcross Holdings” means Southcross Holdings LP, a Delaware limited partnership.

“Sponsors” means one or more funds, accounts, or other entities managed or advised by either Tailwater Capital LLC or EIG Management Company, LLC.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one *minus* the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the DIP Agent is subject for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Structuring Fee” has the meaning assigned to such term in Section 3.05(a).

“Subsidiary” means: (a) any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by (i) another Person, (ii) one or more of such other Person’s Subsidiaries, or (iii) collectively, such other Person and one or more of such other Person’s Subsidiaries, and (b) any partnership of which such other Person or any of such other Person’s Subsidiaries is a general partner. Unless otherwise indicated herein, each reference to the term **“Subsidiary”** means a Subsidiary of the Borrower.

“Superpriority Claim” shall mean a claim against any Loan Party in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other post-petition claims of the kind specified in, or otherwise arising or ordered under, any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726 (to the extent permitted by

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law), 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment lien or other non-consensual lien, levy or attachment, other than the Carve-Out.

“Synthetic Leases” means, in respect of any Person, all leases which shall have been, or should have been, in accordance with GAAP, treated as operating leases on the financial statements of the Person liable (whether contingently or otherwise) for the payment of rent thereunder and which were properly treated as indebtedness for borrowed money for purposes of U.S. federal income taxes, if the lessee in respect thereof is obligated to either purchase for an amount in excess of, or pay upon early termination an amount in excess of, 80% of the residual value of the Property subject to such operating lease upon expiration or early termination of such lease.

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

“Term Commitment” means (a) with respect to each Lender, the Initial Term Commitment or Delayed Term Commitment of such Lender, as the context may require, in each case, as set forth in Annex I hereto as of the date hereof, as such amount may be reduced or otherwise modified at any time or from time to time in accordance with the terms of this Agreement and (b) the aggregate Term Commitments of all Lenders. The aggregate Term Commitments of all Lenders as of the Effective Date shall total \$72,500,000.

“Testing Period” means (a) for each Variance Testing Date that is prior to the date that is four weeks after the Petition Date, the period from the Petition Date through the immediately preceding calendar week (ending on a Friday) and (b) for each Variance Test Date that is on or after the date that is four weeks after the Petition Date, the rolling four-week period most recently ended on the last Friday prior to the delivery thereof.

“Transactions” means (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof (including, without limitation, the Roll-Up), the issuance or deemed issuance of Letters of Credit hereunder, and the grant of Liens by the Borrower on Collateral pursuant to the Security Instruments, and (b) with respect to each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Secured Obligations and the other obligations under the Guaranty and Collateral Agreement by such Guarantor and such Guarantor’s grant of the security interests and provision of Collateral under the Security Instruments, and the grant of Liens by such Guarantor on Collateral pursuant to the Security Instruments.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

“UBS AG” means UBS AG, Stamford Branch.

“USA Patriot Act” has the meaning assigned to such term in Section 12.16.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.03(f).

“Variance Report” has the meaning assigned to such term in Section 8.01(q)(ii).

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

“Wells Fargo” means Wells Fargo Bank, N.A.

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

“Wind-Down Budget” has the meaning assigned to such term in Section 8.23(c).

“Withdrawal” shall mean a disbursement of funds from the Letter of Credit Account in accordance with Section 2.07(e).

“Withdrawal Request” shall mean a written request by an Issuing Bank for a Withdrawal, substantially in the form of Exhibit I.

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

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

Section 1.03 Types of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a **“Eurodollar Loan”**), and Borrowings may be classified and referred to by Type (e.g., a **“Eurodollar Borrowing”**).

Section 1.04 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Loan Documents), (b) any reference herein to any law or regulation shall be construed, unless otherwise specified, as referring to such law or regulation as amended, modified, supplemented, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to

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refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement. No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP. (a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the DIP Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, applied on a basis consistent with the Financial Statements except for changes in which the Borrower’s independent certified public accountants concur and which are disclosed to the DIP Agent on the next date on which financial statements are required to be delivered to the Lenders pursuant to Section 8.01(a); *provided* that unless the Borrower and the Required Lenders shall otherwise agree in writing, no such change shall modify or affect the manner in which compliance with the covenants contained herein is computed such that all such computations shall be conducted utilizing financial information presented consistently with prior periods.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above of the definition of “Capital Lease,” all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance of the Financial Accounting Standards Board on February 25, 2016 or an Accounting Standards Update (“ASU”) shall continue to be accounted for as operating leases for purposes of this agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized Lease Obligations in the Company’s financial statements.

Section 1.06 Time Periods. Unless otherwise specified, in the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

ARTICLE II THE CREDITS

Section 2.01 Commitments.

(a) Initial DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having an Initial Term Commitment severally agrees to make its portion of the Initial DIP Term Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s Initial Term Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other

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provisions hereof), the funded portion of the Initial DIP Term Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the Initial DIP Term Loan (it being agreed that the full principal amount of the Initial DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). Once the Initial Term Loan has been borrowed, in any amount, the Initial Term Commitment shall be reduced to \$0.

(b) Delayed Draw DIP Term Loan. Subject to the terms and conditions of this Agreement, each Lender having a Delayed Draw Term Commitment severally agrees to make its portion of the Delayed Draw DIP Term Loan to the Borrower on the Delayed Draw DIP Funding Date in a principal amount equal to such Lender’s Delayed Draw Term Commitment as of such date; *provided that*, the aggregate amount of DIP Term Loans shall not exceed the amount the Borrower is authorized to borrow pursuant to the terms of the Final DIP Order. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP Term Loan to be made on such Delayed Draw DIP Funding Date (*i.e.*, the amount advanced to Borrower on such dates) shall be equal to 98.5% of the principal amount of the Delayed Draw DIP Term Loan (it being agreed that the full principal amount of the Delayed Draw DIP Term Loan shall be the “initial” principal amount of such Loan and deemed outstanding on such date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Delayed Draw Term Commitment shall be reduced to \$0 upon the earlier of (a) the date the Delayed Draw Term Loan has been borrowed, in any amount, and (b) the date that is thirty (30) days after the date the Final DIP Order is entered.

(c) DIP LC Loan. Subject to the terms and conditions of this Agreement, each Lender having a DIP LC Commitment severally agrees to make its portion of the DIP LC Loan to the Borrower on the Effective Date in a principal amount equal to such Lender’s DIP LC Commitment as of the Effective Date. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of the DIP LC Loan to be made on the Effective Date (*i.e.*, the amount advanced to Borrower on the Effective Date) shall be equal to 98.5% of the principal amount of the DIP LC Loan (it being agreed that the full principal amount of the DIP LC Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder). The Borrower hereby directs the applicable Lenders and the DIP Agent to cause the proceeds of the DIP LC Loan (net of the original issue discount set forth above) to be deposited in the Letter of Credit Account on the Effective Date. Once the DIP LC Loan has been borrowed, in any amount, the DIP LC Commitment shall be reduced to \$0.

(d) Roll-Up Loans. Subject to the terms and conditions set forth herein, (i) upon entry of the Final DIP Order, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (the “Initial Roll-Up Loans”), on a pro rata basis (based on the Initial DIP Term Loans and DIP LC Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to

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Section 2.01(a) or (c)), and (ii) on the Delayed Draw DIP Funding Date, Prepetition Term Loans held by Prepetition Term Lenders, [as set forth on Schedule 2.01(d)], which are also Lenders or Affiliates of Lenders hereunder shall be automatically substituted and exchanged for (and prepaid by) loans hereunder (together with the Initial Roll-Up Loans, the “**Roll-Up Loans**”), on a pro rata basis (based on the Delayed Draw DIP Term Loans that such Prepetition Term Lender or its Affiliate funded to the Borrower pursuant to Section 2.01(b)), in each case, in an aggregate principal amount equal to \$1.00 of Prepetition Term Loans of such Lender or Affiliate of such Lender for each \$1.00 of DIP Term Loans (and such Roll-Up Loans shall be deemed funded on the date the Final DIP Order is entered or the Delayed Draw DIP Funding Date, as applicable, and shall constitute and shall be deemed to be Loans hereunder) (the foregoing substitution and exchange of Prepetition Term Loans into Roll-Up Loans shall be defined herein, generally, as the “**Roll-Up**”).

(e) For the avoidance of doubt, solely with respect to the applicable calculations in determining the Lenders constituting “Required Lenders” hereunder, Initial DIP Term Loans, Delayed Draw DIP Term Loans, the DIP LC Loans, and the Roll-Up Loans shall constitute a single class of Loans.

Section 2.02 Loans and Borrowings.

(a) Borrowings; Several Obligations. The DIP Term Loans shall be made by the Lenders ratably in accordance with their respective applicable Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(b) Types of Loans. Subject to Section 3.03, each Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. The Roll-Up Loans and the DIP LC Loans shall be deemed Borrowings entirely of ABR Loans.

(c) Minimum Amounts; Limitation on Number of Borrowings. Borrowings of more than one Type may be outstanding at the same time, provided that there shall not at any time be more than a total of four (4) Eurodollar Borrowings outstanding. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(d) Notes. The Loans made by each Lender, if requested by such Lender, shall be evidenced by one or more promissory notes of the Borrower in substantially the form of Exhibit A, dated, in the case of (i) any Lender party hereto as of the date of this Agreement, as of the date of this Agreement, or (ii) any Lender that becomes a party hereto pursuant to an Assignment and Assumption, as of the effective date of such Assignment and Assumption, payable to such Lender in a principal amount equal to its Commitments (or Loans, if applicable),

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and otherwise duly completed. In the event that any Lender's Commitment or Loans increases or decreases for any reason (whether pursuant to Section 12.04(b) or otherwise), if requested by such Lender, the Borrower shall deliver or cause to be delivered on the effective date of such increase or decrease, a new Note payable to such Lender in a principal amount equal to its Commitment or Loans, as applicable, after giving effect to such increase or decrease, and otherwise duly completed. The date, amount, Type, interest rate and, if applicable, Interest Period of each Loan made by each Lender, and all payments made on account of the principal thereof, shall be recorded by such Lender on its books for its applicable Note, and, prior to any transfer, may be endorsed by such Lender on a schedule attached to such Note or any continuation thereof or on any separate record maintained by such Lender. Failure to make any such notation or to attach a schedule shall not affect any Lender's or the Borrower's rights or obligations in respect of such Loans or affect the validity of such transfer by any Lender of its Note.

Section 2.03 Procedure for Advance of Loans.

(a) Term Loan. To request a Borrowing of DIP Term Loans, the Borrower shall give the DIP Agent an irrevocable Notice of Borrowing (provided that any Notice of Borrowing may be conditioned upon the entry of the Interim DIP Order or the Final DIP Order) prior to (a) in the case of a Eurodollar Borrowing [11:00 a.m.], New York City time, three (3) Business Days before (or one (1) Business Day before in the case of a Eurodollar Borrowing on the Effective Date) the proposed Borrowing (or such shorter period approved by DIP Agent prior to the date of such Borrowing) or (b) in the case of an ABR Borrowing, not later than [11:00a.m], New York City Time, one (1) Business Day before the date of the proposed Borrowing, requesting that the Lenders make the applicable DIP Term Loans on such date. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of ABR Loans. Thereafter, the Borrower may elect to convert a Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans to a different Type or to continue a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans as the same Type and, in the case of a Eurodollar Borrowing of Initial DIP Term Loans or Delayed Draw DIP Term Loans, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than four (4) Eurodollar Borrowings outstanding hereunder at any one time.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrower shall deliver to the DIP Agent an Interest Election Request by the time that a Notice of Borrowing would be required under Section 2.03 if the Borrower were requesting a

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Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Sections 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

(d) Notice to Lenders by the DIP Agent. Promptly following receipt of an Interest Election Request, the DIP Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default on Interest Election. If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) Notwithstanding anything to the contrary herein, Roll-Up Loans and DIP LC Loans shall only be borrowed as ABR Loans, and may not be converted to Eurodollar Loans.

Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by [12:00

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noon, New York City time], to the account of the DIP Agent most recently designated by it for such purpose by notice to the Lenders. The Borrower hereby irrevocably authorizes the DIP Agent to disburse the proceeds of the DIP Term Loan in immediately available funds by wire transfer to such Person or Persons as may be designated by the Borrower in writing (or in the case of proceeds of the DIP LC Loans, to the Letter of Credit Account). Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner.

(b) Funding by the Lenders; Presumption by the DIP Agent. Unless the DIP Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the DIP Agent such Lender's share of such Borrowing, the DIP Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the DIP Agent, then the applicable Lender and the Borrower severally agree to pay to the DIP Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the DIP Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the DIP Agent for the same or an overlapping period, the DIP Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the DIP Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the DIP Agent.

Section 2.06 [Reserved].

Section 2.07 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of dollar denominated Letters of Credit for its own account or for the account of any of its Subsidiaries, in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period; *provided* that the Borrower may not request the issuance, amendment, renewal or extension of Letters of Credit hereunder, if, after giving effect to such issuance, amendment, renewal or extension, (i) the LC Cash Collateralization Amount would exceed the Letter of Credit Deposit Amount, (ii) the LC Exposure would exceed the LC Sublimit, or (iii) the aggregate LC Exposure for any Issuing Bank shall not exceed its applicable LC Commitment. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control.

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(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.

The Prepetition Letters of Credit shall be deemed to have been cancelled and re-issued hereunder as of the Effective Date. To request the issuance of any other Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall fax (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the DIP Agent (not less than three (3) Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice:

(i) requesting the issuance of a Letter of Credit or identifying the Letter of Credit to be amended, renewed or extended;

(ii) specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day);

(iii) specifying the date on which such Letter of Credit is to expire (which shall comply with Section 2.07(c));

(iv) specifying the amount of such Letter of Credit;

(v) specifying the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit;

(vi) specifying the current total LC Exposures (without regard to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit) and the *pro forma* total LC Exposures (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit); and

(vii) specifying the current Letter of Credit Deposit Amount and calculating the *pro forma* LC Cash Collateralization Amount (giving effect to the requested Letter of Credit or the requested amendment, renewal or extension of an outstanding Letter of Credit).

Each notice shall constitute a representation and warranty with respect to the information set forth therein and that after giving effect to the requested issuance, amendment, renewal or extension, as applicable, (x) the LC Cash Collateralization Amount shall not exceed the Letter of Credit Deposit Amount, (y) the LC Exposure shall not exceed the LC Sublimit, and (z) each condition precedent set forth in Section 6.02 has been satisfied with respect to such Letter of Credit.

If requested by the applicable Issuing Bank in connection with any request for a Letter of Credit (other than the Prepetition Letters of Credit deemed to be issued hereunder on the Effective Date), the Borrower also shall submit an appropriately completed letter of credit application on such Issuing Bank's standard form as in effect from time to time, which application may require the inclusion of draft language for such Letter of Credit that is

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reasonably acceptable to such Issuing Bank and may be required to be signed by a Responsible Officer of the Borrower.

No Issuing Bank will be required to: (A) issue any Letter of Credit if (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it, (2) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally, (3) except as otherwise agreed by such Issuing Bank, such Letter of Credit is in an initial stated amount less than \$10,000, (4) such Letter of Credit is to be denominated in a currency other than Dollars, or (5) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (B) amend or extend any Letter of Credit if such Issuing Bank would not be required at such time to issue the Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is ten (10) Business Days prior to the Maturity Date. Each Letter of Credit with a one (1) year term may provide for the renewal thereof for additional one (1) year periods; *provided* that no such period shall extend beyond the date described in clause (ii) above. Notwithstanding the foregoing, Letters of Credit may be issued with an expiration date that extends past the date set forth in clause (ii) above and so long as such Letter of Credit is cash collateralized pursuant to Section 2.07(j)(iii)(B).

(d) LC Participations. Any Issuing Bank may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any other Issuing Bank, sell participations in Letters of Credit (up to the aggregate amount available to be drawn under such Letter of Credit) or LC Disbursements that have not been reimbursed by the Borrower as provided in Section 2.07(e) to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, an "**LC Participant**"); *provided* that (A) such Issuing Bank's obligations under this Agreement shall remain unchanged, (B) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, the Lenders and any other Issuing Banks shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Banks's rights and obligations under this Agreement.

(e) Reimbursement. (i) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to

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the DIP Agent for the account of such Issuing Bank an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York time, on (x) the Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (y) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that the Borrower's obligation to reimburse such Issuing Bank with respect to such LC Disbursement shall first be satisfied by funds disbursed to such Issuing Bank from the Letter of Credit Account and applied to such reimbursement obligations in accordance with clauses (ii) through (iv) of this Section 2.07(e) (and the Borrower hereby irrevocably authorizes and instructs such Issuing Bank to request such withdrawals and applications without notice of any kind or further order or action by the Bankruptcy Court) Promptly following receipt by the DIP Agent of any payment from the Borrower pursuant to this Section 2.07(e), the DIP Agent shall distribute such payment to the applicable Issuing Bank.

(ii) If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, such Issuing Bank may request that the DIP Agent disburse funds from the Letter of Credit Account to such Issuing Bank to reimburse such Issuing Bank for such LC Disbursement, by delivering to the DIP Agent a Withdrawal Request specifying (A) the amount of the disbursement to be made to such Issuing Bank, (B) the Letter of Credit to which such disbursement relates and (C) the wiring information of the bank account of such Issuing Bank to which such funds are to be sent. Promptly following its receipt of a Withdrawal Request, the DIP Agent shall disburse funds from the Letter of Credit Account in an aggregate amount equal to the amount specified in such Withdrawal Request to the account of the Issuing Bank specified in such Withdrawal Request. All proceeds of the DIP LC Loans shall be held in the Letter of Credit Account at all times until such proceeds are disbursed or otherwise applied in accordance with this Agreement.

(iii) With respect to any disbursement, withdrawal, transfer, or application of funds from the Letter of Credit Account hereunder, the DIP Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, any Withdrawal Request submitted by an Issuing Bank as evidence that (A) an LC Disbursement has been made by such Issuing Bank in the amount specified in such Withdrawal Request and (B) such Issuing Bank is entitled to receipt funds from the Letter of Credit Account in the amount specified in such Withdrawal Request. Notwithstanding anything herein to the contrary, the DIP Agent shall have no obligation to disburse any amount from the Letter of Credit Account in excess of the amounts then held in the Letter of Credit Account. The DIP Agent shall have no duty to inquire or investigate whether any Issuing Bank is entitled to receive the funds requested in the applicable Withdrawal Request, and shall not be deemed to have any knowledge as to whether or not any such Withdrawal Request is permitted to be given.

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(iv) For the avoidance of doubt, all DIP LC Loans shall be Loans for all purposes hereunder and, notwithstanding that the proceeds of such DIP LC Loans are held in the Letter of Credit Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of this Agreement and the other Loan Documents to the same extent as all other Loans. The Borrower shall pay to the DIP Agent upon demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance of the Letter of Credit Account

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in Section 2.07(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or any Letter of Credit Agreement, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.07(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the DIP Agent, the Lenders nor any Issuing Bank, nor any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; *provided* that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised all requisite care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a

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Letter of Credit. Each Issuing Bank shall promptly notify the Borrower by telephone (confirmed by facsimile (with a copy to the Agent)) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, until the Borrower shall have reimbursed such Issuing Bank for such LC Disbursement (either with its own funds or funds withdrawn from the Letter of Credit Account), the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans. Interest accrued pursuant to this Section 2.07(h) shall be for the account of the applicable Issuing Bank.

(i) Replacement of any Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the DIP Agent (acting at the direction of the Required Lenders), the replaced Issuing Bank and the successor Issuing Bank. The DIP Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement becomes effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 3.05(a). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous or existing Issuing Bank, or to such successor and all previous and existing Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization.

(i) Establishment of Letter of Credit Account. The DIP Agent shall establish the Letter of Credit Account.

(ii) Deposits in Letter of Credit Account. The Letter of Credit Account shall be funded by the Borrower on the Effective Date from the proceeds of the DIP LC Loans advanced pursuant to Section 2.01(c).

(iii) Withdrawals from and Closing of Letter of Credit Account. Amounts on deposit in the Letter of Credit Account shall be withdrawn and distributed as follows:

(A) in accordance with Section 2.07(e) above;

(B) upon delivery of a Letter of Credit Account Withdrawal Notice to the DIP Agent at least two (2) Business Days prior to the date of a requested withdrawal, the Borrower may withdraw an amount not to

exceed in the aggregate, together with all other such withdrawals, the Alternate Cash Collateral Amount; *provided* that the proceeds of such withdrawal shall be used by the Borrower and the other Loan Parties solely to cash collateralize the obligations of the vendors and suppliers of the Loan Parties in accordance with Section 9.03(j);

(C) the Borrower may from time to time request the release of cash collateral from the Letter of Credit Account; *provided* that the Borrower shall direct that 100% of the amounts withdrawn immediately prepay the Loans in the amount of the cash so released; *provided, further*, that any prepayment pursuant to this clause shall be applied to the Loans in accordance with Section 3.04(c); *provided, further*, that in no event shall the LC Cash Collateralization Amount exceed the Letter of Credit Deposit Amount after giving effect to such release;

(D) upon the Maturity Date, unless otherwise specified by an order rendered by the Bankruptcy Court: (1) if the DIP Agent has received written notice from each Issuing Bank that all Letters of Credit issued by such Issuing Bank have expired or been cancelled (or that a “backstop” letter of credit or other cash collateralization thereof at 103% pursuant to arrangements reasonably satisfactory to such Issuing Bank has been provided to such Issuing Bank) (such written notice, an “**LC Termination Notice**”), the DIP Agent shall, unless otherwise directed by the Required Lenders, withdraw from the Letter of Credit Account the aggregate amount then on deposit therein and apply such amounts to repayment of the Secured Obligations as set forth in Section 10.02(c) or (2) if the DIP Agent has not received such LC Termination Notice, the DIP Agent shall withdraw from the Letter of Credit Account the aggregate amount then on deposit therein that is equal to 103% of the face amount of Letters of Credit then outstanding and disburse such amounts in accordance with a written direction from the Issuing Banks (or, in the absence of such written direction, the DIP Agent may request that the Bankruptcy Court make such determination).

Except as otherwise provided in clause (iii) above, or any Letter of Credit Agreement, amounts in the Letter of Credit Account may not be withdrawn by the Borrower or used for any purpose other than the reimbursement of the Issuing Banks or repayment of the Secured Obligations hereunder.

(iv) The Borrower hereby grants to the DIP Agent, for the benefit of the Issuing Banks and the other Secured Parties, an exclusive superpriority and continuing perfected security interest in and Lien on such account and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in such account, all deposits or wire transfers made thereto, any and all proceeds, products, accessions, rents, profits, income and benefits therefrom, and any substitutions and replacements therefor.

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(v) The Borrower's obligation to deposit amounts pursuant to this Section 2.07(j) shall be absolute and unconditional, without regard to whether any beneficiary of any Letter of Credit has attempted to draw down all or a portion of such amount under the terms of a Letter of Credit, and, to the fullest extent permitted by applicable law, shall not be subject to any defense or be affected by a right of set-off, counterclaim or recoupment which the Borrower or any of its Subsidiaries may now or hereafter have against any such beneficiary, any Issuing Bank, the DIP Agent, the Lenders or any other Person for any reason whatsoever. Such deposit shall be held as collateral securing the payment and performance of the Borrower's and the Guarantors' obligations under this Agreement and the other Loan Documents. Subject to Sections 2.07(j)(iii)(C) and (D), the DIP Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Such deposits shall not bear interest.

(k) Applicability of ISP. Unless otherwise expressly agreed by any Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and such Issuing Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Calculation of Maximum Stated Amount. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

ARTICLE III

PAYMENTS OF PRINCIPAL AND INTEREST; PREPAYMENTS; FEES

Section 3.01 Repayment of Loans. If not sooner paid (pursuant to Section 3.04), the Borrower shall pay the DIP Term Loan and all other Secured Obligations, or in the case of Letters of Credit cash collateralized in accordance with Section 2.07(j)(iii)(D), in full and in cash, together with accrued interest thereon, on the Maturity Date.

Section 3.02 Interest.

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(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at an annual rate equal to the sum of (i) the Alternate Base Rate *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at an annual rate equal to the sum of (i) the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing *plus* (ii) the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default Rate. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, or if any principal of or interest on any Loan or any fee or other amount payable by the Borrower or any other Loan Party hereunder or under any other Loan Document is not paid when due, whether at stated maturity, upon acceleration or otherwise, then all Loans outstanding, in the case of an Event of Default, and such overdue amount, in the case of a failure to pay amounts when due, shall bear interest, after as well as before judgment, at a rate per annum equal to two percent (2.0%) *plus* (i) when used with respect to obligations other than Loans, an interest rate equal to the rate applicable to ABR Loans as provided in Section 3.02(a), and (ii) when used with respect to Loans the rate otherwise applicable to such Loans.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; *provided* that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the DIP Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the DIP Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Interest Period; or

(b) the DIP Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect

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the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period; then the DIP Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the DIP Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing (without giving effect to clause (c) of the definition of Alternative Base Rate).

Section 3.04 Prepayments.

(a) Optional Prepayments.

(i) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (other than the Exit Fee), subject to prior notice in accordance with Section 3.04(a)(ii).

(ii) The Borrower shall notify the DIP Agent by telephone (confirmed by facsimile or e-mail) of any prepayment hereunder (A) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided*, that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked (by written notice to the DIP Agent on or prior to the specified effective date) if such condition is not satisfied (provided that the failure of such condition shall not relieve the Borrower from its obligations under Section 5.02 in respect thereof). Promptly following receipt of any such notice relating to a Borrowing, the DIP Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. Each optional prepayment made pursuant this Section 3.04(a) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(b) Mandatory Prepayments. Subject to the Carve-Out and the Wind-Down Budget (if any):

(i) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Extraordinary Receipt, an amount equal to 100% of the Net Cash Proceeds from such Extraordinary Receipt shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(ii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Asset Sale made pursuant to Section 9.11(f) and (j), an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied by the Borrower on such date as a mandatory repayment in accordance with Section 3.04(c).

(iii) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any Recovery Event, an amount equal to 100% of the Net Cash Proceeds from such Recovery Event shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(iv) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any cash proceeds from any issuance of Indebtedness (other than Indebtedness permitted by Section 9.02), an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(v) On each date on or after the Effective Date upon which the Borrower or any Subsidiary receives any Equity Issuance Proceeds, an amount equal to 100% of the Net Cash Proceeds from such issuance shall be applied on such date as a mandatory repayment in accordance with the requirements of Section 3.04(c).

(vi) Each optional prepayment made pursuant this Section 3.04(b) shall be applied ratably to the Loans in accordance with Section 3.04(c).

(vii) If the Borrower is required to make a mandatory prepayment of Eurodollar Borrowings under this Section 3.04, the Borrower shall have the right, in lieu of making such prepayment in full, to deposit an amount equal to such mandatory prepayment with the DIP Agent in a non-interest bearing cash collateral account maintained by and in the sole dominion and control of the DIP Agent. Any amounts so deposited shall be held by the DIP Agent as collateral for the prepayment of such Eurodollar Rate Loans and shall be applied to the prepayment of the applicable Eurodollar Rate Loans at the end of the current Interest Periods applicable thereto.

(c) Prepayments Waterfall. All Prepayments pursuant to this Section 3.04 shall be accompanied by accrued interest to the extent required by Section 3.02. Subject to the Carve-Out and the Wind-Down Budget (if any), each prepayment of Borrowings pursuant to this Section 3.04 shall be applied by the Borrower, in accordance with the DIP Order, and to the extent not in contravention with the DIP Order: (i) *first*, ratably to pay the Exit Fee, if applicable, (ii) *second*, to be remitted by the Borrower to the DIP Agent and applied by the DIP Agent ratably to repay the DIP Term Loans then outstanding, (iii) *third*, to be remitted by the Borrower to each of the Prepetition Term Agent and the Prepetition Revolver Agent, to be used by such Prepetition Agent to pay any superpriority adequate protection claims of the Prepetition Secured

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Parties on a pro rata basis; and (iv) *thereafter*, to be remitted by the Borrower to the Prepetition Revolving Agent, the Prepetition Term Agent and the DIP Agent, in such amounts to ratably repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); *provided that*, each repayment of Borrowings made under each tranche shall be applied, *first* ratably to any ABR Borrowings then outstanding under such tranche, and, *second*, to any Eurodollar Borrowings then outstanding under such tranche; *provided further*, if more than one Eurodollar Borrowing is outstanding under such tranche, such repayments shall be made to each such Eurodollar Borrowing in order of priority beginning with the Eurodollar Borrowing with the least number of days remaining in the Interest Period applicable thereto and ending with the Eurodollar Borrowing with the most number of days remaining in the Interest Period applicable thereto.

(d) No Premium or Penalty. Prepayments permitted or required under this Section 3.04 shall be without premium or penalty (other than the Exit Fee), except as required under Section 5.02.

(e) Notice of Prepayment. The Borrower shall notify the DIP Agent by written notice of any mandatory prepayment under Section 3.04(b) not later than 11:00 a.m., New York City time, two Business Days before the date of such prepayment. Each such notice shall specify the prepayment date (which shall be a Business Day), the principal amount of each Borrowing or portion thereof to be prepaid and a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the DIP Agent shall advise the Lenders of the contents thereof.

(f) No Reborrowings. Amounts prepaid pursuant to this Section 3.04 may not be reborrowed.

Section 3.05 Fees.

(a) Structuring Fees. The Borrower agrees to pay to the DIP Agent, for the benefit of each Lender, a structuring fee (the “Structuring Fee”) equal to 1.00% of the aggregate amount of such Lender’s Commitment, which shall be due and payable on the Effective Date either in cash, or at the option of the Required Lenders, as “original issue discount” from the funded amounts advanced to Borrower on the Effective Date.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to each Issuing Bank, for its own account, (x) a fronting fee equal to 0.125% of the stated amount of each Prepetition Letter of Credit deemed issued by it hereunder, and (y) a fronting fee equal to 0.50% of the stated amount of each other Letter of Credit issued by it, *provided that*, in each case, in no event shall such fronting fee be less than \$750.00 for any Letter of Credit, and (ii) to each Issuing Bank, for its own account, its standard fees with respect to the issuance, amendment, transfer, renewal or extension of any Letter of Credit issued by it or processing of drawings thereunder payable upon the effectiveness thereof. Fronting fees shall be payable in advance (1) with respect to any Prepetition Letters of Credit deemed issued hereunder, on the Effective Date, and (2) with respect to any other Letter of Credit, on the date of issuance of such Letter of Credit.

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Any other fees payable to any Issuing Bank pursuant to this Section 3.05(b) shall be payable within ten (10) days after demand.

(c) Commitment Premiums. The Borrower agrees to pay to the DIP Provider Parties (as defined in the Commitment Letter), for their own account, the premiums payable in the amounts and at the times set forth in the Commitment Letter.

(d) DIP Agent Fees. The Borrower agrees to pay to the DIP Agent, for its own account, fees payable in the amounts and at the times set forth in the applicable Agency Fee Letter.

(e) Exit Fees. The Borrower shall pay to the DIP Agent, for the ratable benefit of each Lender, an exit fee (the “**Exit Fee**”) equal to 1.50% of the aggregate amount of such Lender’s DIP Term Loans and unused Delayed Draw Term Commitment. The Exit Fee (or portion thereof, as applicable) shall be paid in cash (i) on the date of any prepayment or repayment of DIP Term Loans pursuant to Section 3.04 or otherwise, and (ii) on the Maturity Date. The Exit Fee, when paid, shall be paid to the DIP Agent for the benefit of each DIP Term Lender, ratably based on its Applicable Percentage.

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

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

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the DIP Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the DIP Agent to the account of the DIP Agent from time to time for receipt of payments, except payments to be made directly to the applicable Issuing Bank as expressly provided herein and except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The DIP Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

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

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due to such parties, (ii) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties and (iii) third, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the DIP Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (B) the provisions of this Section 4.01 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Payments by the Borrower; Presumptions by the DIP Agent. Unless the DIP Agent shall have received notice from the Borrower prior to the date on which any payment is due to the DIP Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the DIP Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or any Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the DIP Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the DIP Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the DIP Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the DIP Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(a), Section 4.02, Section 12.03(c) or otherwise hereunder then the DIP Agent may, in its discretion (notwithstanding any contrary provision hereof), (a) apply any amounts thereafter received by the DIP Agent for the account of such Lender and for the benefit of the DIP Agent or the Issuing Banks to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (b) hold any such amounts in a segregated account as cash collateral for, and application to, any

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future funding obligations of such Lender hereunder, in the case of each of (a) and (b) above, in any order as determined by the DIP Agent in its discretion. If at any time prior to the acceleration or maturity of the Loans, the DIP Agent receives any payment in respect of principal of a Loan while one or more Defaulting Lenders is a party to this Agreement, the DIP Agent shall apply such payment first to the Borrowing(s) for which any such Defaulting Lender has failed to fund its *pro rata* share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, all principal will be applied ratably as provided in Section 10.02(c).

Section 4.04 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) [reserved]; and

(b) the Commitment and the Credit Exposure 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 12.02), *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each adversely affected Lender which affects such Defaulting Lender differently than all other Lenders or all other adversely affected Lenders, as the case may be, shall require the consent of such Defaulting Lender.

ARTICLE V

INCREASED COSTS; BREAK FUNDING PAYMENTS; TAXES; ILLEGALITY

Section 5.01 Increased Costs.

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

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

(ii) subject any Lender or any Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender or any Issuing Bank in respect thereof (except for Indemnified Taxes, Other Taxes covered by Section 5.03 or Connection Income Taxes and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or any Issuing Bank); or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or

Eurodollar Loans made by such Lender or any Letter of Credit; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Issuing Bank of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or such Issuing Bank, the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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

(c) Certificates for Reimbursement. A certificate of a Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in Sections 5.01(a) or (b) and delivered to the Borrower (with a copy to the DIP Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or such Issuing Bank pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 365 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; *provided, further,* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 365-day period referred to above shall be extended to include the period of retroactive effect thereof.

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Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 5.04(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrower (with a copy to the DIP Agent) and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower or any Guarantor under any Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any Guarantor shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.03(a)), the DIP Agent, Lender or Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Guarantor shall make such deductions and (iii) the Borrower or such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by the Borrower.** Without limiting the provisions of Section 5.03(a), the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by the Borrower.** The Borrower shall indemnify the DIP Agent, each Lender and each Issuing Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable

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or paid by the DIP Agent, such Lender or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability under this Section 5.03 delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the DIP Agent), or by the DIP Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the DIP Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the DIP Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.04(d)(ii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the DIP Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the DIP Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any other source against any amount due to the DIP Agent under this paragraph (d).

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

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under this Agreement or any other Loan Document shall deliver to the Withholding Agent (with a copy to the DIP Agent), at the time or times prescribed by applicable law or reasonably requested by the Withholding Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Withholding Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Withholding Agent as will enable the Withholding Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Sections 5.03(f)(ii)(A) and 5.03(f)(ii)(B) and Section 5.03(g) below) shall not be required if in the Lender's reasonable judgment such

completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a “United States person” as defined in section 7701(a)(30) of the Code shall deliver to the Withholding Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Withholding Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Withholding Agent, but only if such Foreign Lender is legally entitled to do so), 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 establishing an exemption from or reduction of, United States federal withholding tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, United States federal withholding tax pursuant to the “business profits” or “other income” article of such tax treaty;

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

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

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(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, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-4 on behalf of each such direct and indirect partner; and

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

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

(g) Treatment of Certain Refunds. If the DIP Agent, a Lender or an Issuing Bank determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.03, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 5.03 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the DIP Agent, such Lender or such Issuing Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the DIP Agent, such Lender or such Issuing Bank, agrees to repay the amount paid over to the Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the DIP Agent, such Lender or such Issuing Bank in the event the DIP Agent, such Lender or such Issuing Bank is required to repay such refund to such Governmental Authority. This Section 5.03 shall not be construed to require the DIP Agent, any Lender or any Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

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(h) FATCA. If a payment made to a Lender under this Agreement would be subject to United States federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this Section 5.03(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, the Borrower and the DIP Agent shall treat (and the DIP Agent is authorized to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 5.04 Mitigation Obligations; Replacement of Lenders.

(a) Designation of Different Lending Office. If any Lender requests compensation under Section 5.01, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.01, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the DIP 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 12.04(b)), 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 (i) the Borrower shall have paid to the DIP Agent the process and recording fee specified in Section 12.04(b)(iv), (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Credit Exposure, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.04(c) or Section 5.02), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under Section 5.01 or payments required to be made pursuant to Section 5.03, such assignment will result in a reduction in such compensation or

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payments thereafter, and (iv) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the DIP Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "**Affected Loans**") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (without giving effect to clause (c) of the definition of Alternative Base Rate) (and, if such Lender so requests by notice to the Borrower and the DIP Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

ARTICLE VI CONDITIONS PRECEDENT

Section 6.01 Effective Date. The obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder (exclusive of the Prepetition Letters of Credit) shall not become effective until the Business Day on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Petition Date will have occurred, and each Loan Party will be a debtor and a debtor-in-possession in the Chapter 11 Cases. All "first day orders" entered by the Bankruptcy Court in connection with the commencement of the Chapter 11 Cases (other than the Cash Management Order or the Interim DIP Order), will be satisfactory in form and substance to the Required Lenders;

(b) Not later than five (5) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order, in form and substance satisfactory to the Required Lenders, which Interim DIP Order shall be in full force and effect and has not been vacated, reversed, modified, amended or stayed;

(c) All fees, costs and expenses required to be have been paid or reimbursed, as set forth herein and in the Loans Documents, the Fee Letter and the Agency Fee Letter shall have been paid or reimbursed or will be paid or reimbursed contemporaneously with the Effective Date;

(d) The Required Lenders and the DIP Agent shall have received and the Required Lenders shall be satisfied with a cash flow forecast for the 13-week period commencing on the Effective Date dated as of a date not more than 2 Business Days prior to the Effective Date (the "**Initial Approved Budget**");

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(e) One or more orders, in form and substance satisfactory to the Required Lenders in all respects, approving such cash management systems and arrangements (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the “**Cash Management Order**”) (it being understood and agreed that (i) an order substantially in a form approved by Lender Counsel shall, if entered by the Bankruptcy Court, be deemed acceptable to the Required Lenders and (ii) for the avoidance of doubt, the Borrower’s cash management systems and arrangements in effect on the Effective Date in accordance with the Prepetition Revolving Credit Agreement shall be deemed acceptable to the Required Lenders) shall have been entered by the Bankruptcy Court, which Cash Management Order shall be in full force and effect and shall not have been (x) stayed, vacated or reversed, or (y) amended or modified except as otherwise agreed to in writing by Lender Counsel or Required Lenders in their sole discretion;

(f) Since December 31, 2018, there shall not have occurred or there shall not exist any event, condition or circumstance that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(g) The DIP Agent and the Required Lenders shall have received a certificate of the Secretary or an Assistant Secretary of each Loan Party setting forth (i) resolutions of its board of directors (or its equivalent) with respect to the authorization of such Loan Party to execute and deliver the Loan Documents to which it is a party and to enter into the Transactions contemplated in those documents, (ii) the officers of such Loan Party (A) who are authorized to sign the Loan Documents to which such Loan Party is a party and (B) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the Transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the Organization Documents of such Loan Party, certified as being true and complete. The DIP Agent and the Lenders may conclusively rely on such certificate until the DIP Agent receives notice in writing from such Loan Party to the contrary.

(h) The DIP Agent and the Required Lenders shall have received certificates of the appropriate state agencies with respect to the existence, qualification and good standing of each Loan Party in its state of formation.

(i) The DIP Agent and the Required Lenders shall have received a customary closing certificate substantially in the form of Exhibit D-1, duly and properly executed by a Financial Officer and dated as of the Effective Date.

(j) The DIP Agent and the Required Lenders shall have received counterparts of this Agreement, the Guaranty and Collateral Agreement and the Agency Fee Letter, signed on behalf of each party thereto.

(k) The DIP Agent and the Required Lenders shall have received the Financial Statements.

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(l) The DIP Agent and the Required Lenders shall have received from each party thereto duly executed counterparts of the Security Instruments. In connection with the execution and delivery of the Security Instruments, the Required Lenders shall:

(i) be satisfied that the Interim DIP Order or Security Instruments required to be executed on the Effective Date create (or will create, upon proper filing, recording or registration thereof, or upon entry of, the Interim DIP Order) perfected Liens having the priorities set forth in the Interim DIP Order (subject only to Excepted Liens on all of the tangible and intangible Property of the Loan Parties other than *de minimis* Property excluded in the DIP Agent's sole discretion); and

(ii) have received (or its bailee pursuant to the Interim DIP Order has received) certificates (if any), together with undated, blank stock powers for each such certificate, representing all of the issued and outstanding Equity Interests of each of the Loan Parties (other than the Borrower), to the extent certificated.

(iii) The DIP Agent shall have received an opinion of Davis Polk & Wardwell LLP, special counsel to the Borrower in form and substance satisfactory to the DIP Agent, the Required Lenders and their counsel.

(m) [Reserved].

(n) The DIP Agent and the Required Lenders shall have received appropriate UCC search results satisfactory to DIP Lenders or the Required Lenders reflecting no prior Liens encumbering the Properties of the Borrower and the Subsidiaries; other than those being assigned or released on or prior to the Effective Date or Liens permitted by Section 9.03.

(o) Subject to Section 8.20, each document (including any Uniform Commercial Code financing statement) required by this Agreement or under law or reasonably requested by the DIP Agent or the Required Lenders to be filed, registered or recorded in order to create in favor of the DIP Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein having the priorities set forth in the DIP Orders, shall be in proper form for filing, registration or recordation.

(p) The DIP Agent and the Lenders shall have received from the Loan Parties, to the extent requested by the Lenders or the DIP Agent, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(q) The DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Without limiting the generality of the provisions of Section 11.04, for purposes of determining compliance with the conditions specified in this Section 6.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 6.01 to be consented to or approved by or acceptable or satisfactory to a Lender unless the DIP Agent shall have

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received notice from such Lender prior to the Effective Date specifying its objection thereto. At the request of the Required Lenders, the DIP Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of each Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 12.02) at or prior to 5:00 p.m., New York City time, on [●] (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 6.02 Each Subsequent Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, extend the Scheduled Maturity Date in accordance with the definition thereof or withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, and each Issuing Bank to issue, amend, renew or extend any Letter of Credit, in each case, after the Effective Date, is subject to the satisfaction of the following conditions:

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

(b) The representations and warranties of the Borrower and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except that (i) to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing, extension of the Scheduled Maturity Date, withdrawal of cash from the Letter of Credit Account or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct in all material respects as of such specified earlier date, and (ii) to the extent that any such representations and warranties are qualified by materiality, such representations and warranties shall continue to be true and correct in all respects.

(c) In the case of an issuance, amendment, renewal or extension of a Letter of Credit or the withdraw cash from the Letter of Credit Account to fund the Alternative Cash Collateral Amount, the applicable Issuing Bank and the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03, a Letter of Credit Withdrawal Notice in accordance with Section 2.07(j) or a request for a Letter of Credit and related Letter of Credit Agreement in accordance with Section 2.07(b), as applicable.

(d) Solely with respect to the Delayed Draw DIP Term Loan, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance reasonably satisfactory to the Required Lenders and the DIP Agent shall have received a signed copy of such Final Order, which Final DIP Order has not been vacated, reversed, modified, amended or stayed; *provided*, for the avoidance of doubt, no Lender holding Delayed Draw DIP Term Commitments shall be required to fund any Delayed Draw DIP Term Loans to the extent that the Final DIP Order does

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not approve the Roll-Up that is to be consummated on the Delayed Draw DIP Funding Date pursuant to Section 2.01(d).

(e) The Final DIP Order shall have been entered by the Bankruptcy Court no later than noon (12:00 p.m.) Eastern Time on the initial Delayed Draw DIP Funding Date.

(f) In the case of a Borrowing of Delayed Draw DIP Term Loans, the DIP Agent shall have received a Notice of Borrowing in accordance with Section 2.03.

Each request for a Borrowing and each request for the issuance, amendment, renewal or extension of any Letter of Credit and each acceptance of the foregoing shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in Sections 6.02(a) and (b).

ARTICLE VII REPRESENTATIONS AND WARRANTIES

The Borrower (on behalf of itself and its Subsidiaries), and each Guarantor by its execution of the Guaranty and Collateral Agreement, represents and warrants to the DIP Agent, any Issuing Banks and the Lenders that:

Section 7.01 Organization; Powers. Each of the Borrower and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions are within each Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action (including, without limitation, any action required to be taken by any class of directors of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which a Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, as applicable, enforceable in accordance with its terms, except as may be limited by the DIP Orders.

Section 7.03 Approvals; No Conflicts. Subject to entry of the Interim DIP Order (or the Final DIP Order, where applicable) and the terms thereof, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or any class of directors, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing

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of the Security Instruments as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect or do not have an adverse effect on the enforceability of the Loan Documents, (b) will not violate (i) any applicable law or regulation, (ii) any Organization Documents of the Borrower or any Subsidiary, or (iii) any order of any Governmental Authority, (c) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any indenture or other agreement regarding Indebtedness of the Borrower or any Subsidiary or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, (d) other than violations arising as a result of the commencement of the Chapter 11 Cases or where enforcement is stayed as upon commencement of the Chapter 11 Cases or as otherwise excused by the Bankruptcy Court, will not violate or result in a default under any other agreement or other instrument binding upon the Borrower or any Subsidiary, or its Properties, or give rise to a right thereunder to require any payment to be made by the Borrower or such Subsidiary, other than such violations or defaults which would not cause a Default hereunder, could not reasonably be expected to have a Material Adverse Effect, or do not have an adverse effect on the enforceability of any Loan Documents, and (e) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Subsidiary (other than the Liens created by the Loan Documents).

Section 7.04 Financial Condition; No Material Adverse Change.

(a) All financial statements relating to any Loan Party which have been or may hereafter be delivered by any Loan Party to the DIP Agent and the Lenders pursuant to the terms of the Agreement have been prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such dates and for such periods. The representations in this Section 7.04(a), as applicable, are subject, in the case of unaudited financial statements, to normal year-end audit adjustments and accruals and the absence of notes.

(b) Since December 31, 2018, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Indebtedness (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except as referred to or reflected or provided for in the Financial Statements.

(d) A true and complete copy of the Initial Approved Budget, as agreed to by the Required Lenders, as of the Effective Date, is attached as Annex IV hereto.

(e) Each Proposed Budget and any other projections regarding the financial performance of the Borrower and its Consolidated Subsidiaries which have been or may hereafter be delivered to DIP Agent and the Lenders have been prepared on a reasonable basis

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and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided (and on the Effective Date in the case of forecasts provided prior to the Effective Date) and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that neither the Borrower nor any Subsidiary makes any representation that such projections will be realized). [No facts exist that, individually or in the aggregate, would result in any material change in the Approved Budget (subject to Permitted Variances).]

Section 7.05 Litigation. Other than the Chapter 11 Cases, there are no unstayed actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Subsidiary, or any of their Properties (a) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (b) that involve any Loan Document or the Transactions.

Section 7.06 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

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

(b) the Borrower and the Subsidiaries have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and none of the Borrower or the Subsidiaries has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary contain or have contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to

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CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

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

(f) neither the Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice;

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation, and, to the Borrower's knowledge, there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure; and

(h) the Borrower has provided, or has caused its Subsidiaries to provide, to the Lenders complete and correct copies of all environmental site assessment reports, investigations, studies, analyses, and correspondence on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrower's or the Subsidiaries' possession or control and relating to their respective Properties or operations thereon.

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

(a) Each of the Borrower and each Subsidiary is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than as result of the commencement of the Chapter 11 Cases, neither the Borrower nor any Subsidiary is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or a Subsidiary to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any

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Material Indebtedness is outstanding or by which the Borrower or any Subsidiary or any of their Properties is bound, except where enforcement is stayed upon commencement of the Chapter 11 Cases.

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Borrower nor any Subsidiary is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Taxes. Except as set forth on Schedule 7.09, each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed. Each of the Borrower and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes for which payment is stayed or excused under the Bankruptcy Code or that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No currently outstanding Tax Lien has been filed against the Borrower, any of the Subsidiaries, or any of their respective Properties, and, to the knowledge of the Borrower, no claim is being asserted against the Borrower, any of the Subsidiaries, or any of their respective Properties with respect to any such Tax or other such governmental charge in each case, except with respect to Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 7.10 ERISA.

(a) The Borrower, the Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code, except where the failure to so establish and maintain such Plan could not reasonably be expected to have a Material Adverse Effect.

(c) No act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) Full payment when due has been made of all amounts which the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former

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employees of such entities, with respect to which its sponsorship of, maintenance of or contribution to may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) Neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

Section 7.11 Disclosure; No Material Misstatements. The Borrower has disclosed to the DIP Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower or any Subsidiary to the DIP Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or, when taken as a whole, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, other forward-looking information and information of a general economic or general industry nature, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such projected financial information was made available and such projections reflect the good faith and reasonable estimates of the Borrower of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein, it being understood that such projected financial information is not to be viewed as facts and that the actual results may vary materially from such projected financial information.

Section 7.12 Insurance. Each Loan Party has, and has caused all of its Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements and all material agreements, including, without limitation, Flood Insurance, if required, with respect to any Property subjected, or required under the Loan Documents to be subjected, to a Lien pursuant to the DIP Orders and/or Security Instruments, and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are usually insured against by companies similarly situated and of comparable size and engaged in the same or a similar business for the assets and operations of the Borrower and its Subsidiaries. Subject to Section 8.20, the DIP Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies, and the DIP Agent has been named as loss payee with respect to Property loss insurance.

Section 7.13 Restriction on Liens. Neither the Borrower nor any of the Subsidiaries is a party to any material agreement or arrangement (other than (a) the "Loan Documents" under and as defined in the Prepetition Term Loan Agreement and the "Loan Documents" under and as

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defined in the Prepetition Revolving Loan Agreement, (b) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (c) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (d) documents creating Liens which are described in clauses (g) or (h) of the definition of “Excepted Liens”, but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h), (e) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any Subsidiary pending the consummation of such sale, (f) [reserved], (g) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (h) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein)), or subject to any order, judgment, writ or decree (other than the DIP Orders), which either restricts or purports to restrict its ability to grant Liens to the DIP Agent for the benefit of the Secured Parties on or in respect of its Properties to secure the Secured Obligations and the Loan Documents.

Section 7.14 Subsidiaries. Except as set forth on Schedule 7.14, the Borrower has no Subsidiaries. Each Person on Schedule 7.14 is a Wholly-Owned Subsidiary. The Borrower has no Foreign Subsidiaries. All of the outstanding Equity Interests of each Subsidiary has been validly issued, is fully paid, is nonassessable and has not been issued in violation of any preemptive or similar rights. Schedule 7.14 also sets forth the holders (and percentages of ownership) of the Equity Interests in each of the Subsidiaries as of the Effective Date.

Section 7.15 Location of Business and Offices. The Borrower’s jurisdiction of organization is Delaware; the name of the Borrower as listed in the public records of its jurisdiction of organization is Southcross Energy Partners, L.P.; and the organizational identification number of the Borrower in its jurisdiction of organization is 5138791 (or, in each case, as set forth in a notice delivered to the DIP Agent pursuant to Section 8.01(j) in accordance with Section 12.01). The Borrower’s principal place of business and chief executive offices are located at the address specified in Section 12.01 (or as set forth in a notice delivered pursuant to Section 8.01(j) and Section 12.01(c)).

Section 7.16 Properties; Titles, Etc.

(a) Each of the Borrower and the Subsidiaries has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its real and personal Property except for defects that, individually or in the aggregate, (i) do not materially interfere with the ordinary conduct of its business and (ii) could not reasonably be expected to have a Material Adverse Effect. All such Property is free and clear of all Liens except Liens permitted by Section 9.03.

(b) All leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Subsidiaries are valid and subsisting, in full

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force and effect, and, other than the commencement of the Chapter 11 Cases, there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any material lease or leases, the enforcement of which has not been stayed.

(c) The rights and Properties presently owned, leased or licensed by the Borrower and the Subsidiaries including, without limitation, all easements and rights of way, include all rights and Properties necessary to permit the Borrower and the Subsidiaries to conduct their business in all material respects in the same manner as its business has been conducted prior to the date hereof (subject to any changes to the business resulting from transactions permitted hereunder).

(d) The Borrower and each Subsidiary owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property rights (“**Intellectual Property**”) material to its business, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and such Subsidiary does not infringe upon the rights of any other Person in any material respect.

Section 7.17 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the offices, plants, gas processing plants, platforms, pipelines, improvements, fixtures, equipment, and other Property owned, leased or used by the Borrower and its Subsidiaries in the conduct of their businesses are (a) being maintained in a state adequate to conduct normal operations, (b) structurally sound with no known defects, (c) in good operating condition and repair, subject to ordinary wear and tear, (d) not in need of maintenance or repair except for ordinary, routine maintenance and repair, (e) sufficient for the operation of the businesses of the Borrower and its Subsidiaries as currently conducted, and (f) in conformity with all Governmental Requirements relating thereto.

Section 7.18 Hedging Agreements. Schedule 7.18, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to Section 8.01(e), sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

Section 7.19 Security Instruments. The Interim DIP Order and/or the Final DIP Order are effective to create, in favor of the DIP Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and perfected security interest in, all of the Collateral described in the Interim DIP Order and/or Final DIP Order. Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect such Liens and security interests, and upon entry by the Bankruptcy Court, the Liens and security interests created by the Interim DIP Order and/or the Final DIP Order shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby, in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Pursuant to and to the extent provided in the Interim DIP Order and/or the Final DIP Order, the Secured Obligations of the Loan Parties hereunder

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will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all superpriority administrative expense claims granted to any other Person, subject only to the Carve-Out.

Section 7.20 Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used for the purposes specified in Section 8.22. The Borrower and its Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan will be used for any purpose which violates the provisions of (a) Regulations T, U or X or any other regulation of the Board, (b) any Sanctions, or (c) the FCPA.

Section 7.21 [Reserved.]

Section 7.22 Common Enterprise. Each of the Borrower and its Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrower and its Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

Section 7.23 Material Contracts. Schedule 7.23 hereto contains a complete list, as of the Effective Date, of all Material Contracts of the Borrower and each Subsidiary, including all amendments thereto. All Material Contracts are in full force and effect, neither the Borrower nor any Subsidiary is in default under any Material Contract other than as result of the commencement of the Chapter 11 Cases, and to the knowledge of the Borrower and each Subsidiary after due inquiry, no other Person that is party thereto is in default under any Material Contract, except for such defaults as could not be reasonably expected to have a Material Adverse Effect or where enforcement is stayed upon commencement of the Chapter 11 Cases. None of the Material Contracts prohibits the transactions contemplated under the Loan Documents. Each of the Material Contracts is currently in the name of, or has been assigned to, a Loan Party (with the consent or acceptance of each other party thereto if and to the extent that such consent or acceptance is required thereunder), each of the Material Contracts is assignable to the DIP Agent as collateral, and each of the Material Contracts is assignable, unless waived by the DIP Agent in its reasonable discretion, by the DIP Agent to a reasonably acceptable transferee if an Event of Default were to occur. The Borrower and its Subsidiaries have delivered to the DIP Agent a complete and current copy of each of their Material Contracts existing on the Effective Date.

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Section 7.24 Broker's Fees. Except as set forth in Schedule 7.24, no broker's or finder's fee, commission or similar compensation will be payable by the Borrower or any Subsidiary with respect to the Transactions.

Section 7.25 Employee Matters. As of the Effective Date, (a) neither the Borrower nor any Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower or any Subsidiary after due inquiry, threatened between the Borrower or any Subsidiary and its respective employees.

Section 7.26 Anti-Terrorism Laws.

(a) The Borrower is not, and to the knowledge of the Borrower, none of the Borrower's Affiliates, officers or directors is in violation of any Governmental Requirement relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), the USA Patriot Act, and the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., in each case, as amended from time to time.

(b) The Borrower is not, and to the knowledge of the Borrower, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the

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Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) (i) Neither the Borrower nor any of its subsidiaries, nor, to the knowledge of any Loan Party, any director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries, is currently, or is owned or controlled by Persons that are currently (A) the subject of any material United States sanctions administered or enforced by OFAC or the United States Department of State (collectively, “**Sanctions**”) or (B) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, and (ii) the Borrower will not directly or indirectly use the proceeds from the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently the subject of Sanctions.

Section 7.27 Foreign Corrupt Practices. No Loan Party, and, to the knowledge of the Borrower, no director, officer, agent, employee or Affiliate of the Borrower or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a material violation by such Persons of the FCPA, including without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and, the Loan Parties and, to the knowledge of the Borrower, their Affiliates have conducted their business in material compliance with the FCPA.

Section 7.28 DIP Orders. The Loan Parties are in compliance with the terms and conditions of the DIP Orders.

ARTICLE VIII AFFIRMATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement, covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 8.01 Financial Statements; Ratings Change; Other Information. The Borrower will furnish to the DIP Agent for, except as otherwise set forth below, delivery to each Lender:

(a) Annual Financial Statements. As soon as available, but in any event not later than ninety (90) days after the end of the fiscal year, its audited consolidated balance sheet and related statements of income or operations (and, as to balance sheets and statements of income or operations, accompanied by consolidating schedules), stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit other than a “going concern” qualification) to the effect

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that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event not later than forty-five (45) days after the end of the fiscal quarter, commencing with the fiscal quarter ending March 31, 2019, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved].

(d) Certificate of Financial Officer – Compliance. Concurrently with any delivery of financial statements required pursuant to Section 8.01(a) or Section 8.01(b), a certificate of a Financial Officer in substantially the form of Exhibit D hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) [reserved] and (iii) stating whether any change in GAAP or in the application thereof has occurred since December 31, 2018 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(e) Certificate of Financial Officer – Hedging Agreements. Concurrently with any delivery of financial statements under Section 8.01(a) and Section 8.01(b), a certificate of a Financial Officer, in substantially the form of Schedule 7.18, setting forth as of the last Business Day of such fiscal quarter or fiscal year, a true and complete list of all Hedging Agreements of the Borrower and each Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(f) [reserved].

(g) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other report or letter submitted to the Borrower or any of its Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of the Borrower or any such Subsidiary, and a copy of any response by the Borrower or any such Subsidiary, or the board of directors (or comparable governing body) of the Borrower or any such Subsidiary, to such letter or report.

(h) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or with any national or foreign

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securities exchange, or required by applicable law to be distributed by the Borrower to its equityholders generally, as the case may be.

(i) Notices Under Material Instruments. Promptly after the furnishing thereof, copies of any financial statement, report or notice furnished to or by any Person pursuant to the terms of any order of the Bankruptcy Court or any Material Indebtedness, other than the Loan Documents, and not otherwise required to be furnished to the Lenders pursuant to any other provision of this Section 8.01.

(j) Information Regarding Loan Parties. Promptly (and in any event within ten (10) Business Days (or such later time as the DIP Agent may agree) written notice of any change (i) any Loan Party's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Loan Party's chief executive office or principal place of business, (iii) in any Loan Party's identity or corporate structure or in the jurisdiction in which such Person is incorporated or formed, (iv) in any Loan Party's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Loan Party's federal taxpayer identification number.

(k) Notices of Certain Changes. Except in connection with Organization Documents of the Borrower and its Subsidiaries that are delivered pursuant to Section 6.01(h), promptly, but in any event within five (5) Business Days after the execution thereof, copies of any material amendment, modification or supplement to the certificate or articles of incorporation, certificate or articles of formation or organization, any preferred stock designation or any other public organic document of the Borrower or any Subsidiary.

(l) [reserved].

(m) [reserved].

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, liquidity, business plan, contract negotiations, financial condition and projections of the Borrower or any Subsidiary (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones, or compliance with the terms of this Agreement or any other Loan Document, as the DIP Agent or any Lender may reasonably request.

(o) Monthly Financial Statements. As soon as available but in any event within thirty-five (35) calendar days after the end of each calendar month, solely with respect to the first two calendar months of each fiscal quarter, its unaudited consolidated balance sheet and related statements of income or operations and cash flows reflecting results of operations as of the end of and for such calendar month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods (or in the case of the balance sheet, as of the end) of the previous fiscal year, all in form satisfactory to the DIP Agent or the Lender Financial Advisor and certified by one of its Financial Officers as

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presenting fairly in all material respects the financial condition and the results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal quarter-end or year-end adjustments, as the case may be, and the absence of footnotes. Concurrently with any delivery of financial statements required pursuant to this Section 8.01(o), the Borrower will furnish to the DIP Agent and each Lender a certificate of a Financial Officer in substantially the form of Exhibit D-3 hereto (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto. It is understood that the materials provided to the DIP Agent and the Lenders pursuant to this clause (o), in accordance with the last sentence of this Section 8.01, will not be identified by the Borrower as “Public” information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated “Public Side Information”.

(p) Ratings Updates. Any reports, information, documentation or other evidence required by and in accordance with Section 8.16.

(q) Budget Updates and Variance Reports.

(i) To the DIP Agent and the financial advisors to the Lenders, as soon as available, but in any event not later than May 1, 2019, and on the Wednesday (or next preceding Business Day if such Wednesday is not a Business Day) of every fourth week thereafter, proposed updated 13-week cash flow forecast (the “Proposed Budget”), containing items of sufficient detail with respect to the Loan Parties for the immediately succeeding consecutive 13 weeks, in the form of the Initial Approved Budget, and otherwise in form and substance acceptable to financial advisors to Lenders, acting at the direction of the Required Lenders, setting forth all anticipated sources and uses of cash and beginning and ending cash balances for such 13-week period, together with a certificate of a Responsible Officer of the Borrower stating that such 13-week cash flow forecast has been prepared on a reasonable basis and in good faith by the Borrower and based upon assumptions believed by the Borrower to be reasonable at the time such projections were provided and from the best information then-available to the Borrower after reasonable inquiry and reflect the good faith and reasonable estimates of the Loan Parties of the future financial performance of Borrower and its Consolidated Subsidiaries and of the other information projected therein for the periods set forth therein (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period(s) covered by such projections may differ substantially from the projected results). To the extent such Proposed Budget is approved by financial advisors to the Lenders, acting at the direction of the Required Lenders, such Proposed Budget shall thereafter be the “Approved Budget” for such period contained therein and for all purposes hereunder and under the DIP Orders. No such Proposed Budget shall become an Approved Budget until so approved; *provided* that if such financial advisors have not objected to such forecast within five (5) Business Days after delivery thereof, such Proposed Budget shall be deemed to be acceptable to and approved by the financial advisors to the Lenders acting at the direction of the Required Lenders. Approval of any Proposed

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Budget shall be evidenced by a writing delivered (which may be through electronic transmission) by the financial advisors to the Lenders acting at the direction of the Required Lenders (which may be made by their agent (including the DIP Agent) or its or their counsel or financial advisors) or by the Borrower in the case of deemed approvals. In the event that any Proposed Budget is not so approved, the last Approved Budget without giving effect to any update, modification or supplement shall remain in effect.

(ii) To the DIP Agent and the financial advisors to the Lenders, on the Wednesday of each calendar week or next preceding Business Day if such Wednesday is not a Business Day (each such delivery date, a “**Variance Testing Date**”), a variance report (each, a “**Variance Report**”), in form and detail reasonably satisfactory to the Required Lenders, reconciling the Approved Budget to the actual sources and uses of cash for (i) the immediately preceding full calendar week (ending on a Saturday) and (ii) the Testing Period, (A) showing, for such periods, actual results for the following items: (1) cash receipts, (2) cash disbursements, (3) net cash flow, (4) professional fees, (5) capital expenditures and (6) billings, (B) noting a line-by-line reconciliation of variances from values set forth for such periods in the relevant Approved Budget and (C) providing an explanation for all material variances, certified by a Responsible Officer of the Borrower. Each Variance Report delivered pursuant to this Section 8.01(q) shall be accompanied by such supporting documentation as reasonably requested by the DIP Agent or the Lender Financial Advisor.

(r) Real Property Report. Concurrently with the delivery of the financial statements under Section 8.01(b), but in any event not later than 45 days after the end of each fiscal quarter, (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders) not to exceed 15 days), a certificate of a Financial Officer setting forth as of the last Business Day of such fiscal quarter, title information in form and substance acceptable to the DIP Agent (acting at the direction of the Required Lenders) with respect to any real Property acquired by the Borrower and its Subsidiaries during such fiscal quarter for consideration in excess of \$1,000,000, individually or in the aggregate.

Information required to be delivered pursuant to Section 8.01(a), (b) or (n) shall be deemed to have been delivered if such information is available on the website of the SEC and the Borrower has delivered notice to the DIP Agent that such reports are so available, which notice may be provided in any certificate delivered pursuant to Section 8.01(d).

The Borrower hereby acknowledges that (a) the DIP Agent may, but shall not be obligated to, make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to the General Partner or the Loan Parties, 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. The Borrower hereby agrees that so long as the Borrower is the issuer of any

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outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the DIP Agent, the Issuing Banks 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 the Borrower 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 12.11); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the DIP Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the following Borrower Materials shall be deemed “PUBLIC,” unless the Borrower notifies the DIP Agent promptly that any such document contains material non-public information: (1) the Loan Documents and (2) notification of changes in the terms of the Credit Facility.

Section 8.02 Notices of Material Events. The Borrower will furnish to the DIP Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Loan Party not previously disclosed in writing to the Lenders or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders) that, in either case, if adversely determined, could reasonably be expected to result in liability in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000;
- (d) any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or its Subsidiaries or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$1,000,000, not fully covered by insurance, subject to normal deductibles; and
- (e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 8.02 shall be accompanied by a statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 8.03 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect; *provided* that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 9.10.

Section 8.04 Payment of Tax Obligations. The Borrower will, and will cause each Subsidiary to, pay its Tax liabilities constituting postpetition obligations that constitute administrative expenses in the Chapter 11 Cases under the Bankruptcy Code or otherwise ordered by the Bankruptcy Court, before the same shall become delinquent or in default; *provided*, that the obligations hereunder are subject to the provisions of the Bankruptcy Code and any required approvals by an applicable order of the Bankruptcy Court.

Section 8.05 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the reading, tenor and effect thereof, and the Borrower will, and will cause each Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at or within the time or times and in the manner specified.

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

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Governmental Requirements, including, without limitation, applicable Environmental Laws, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(b) preserve, maintain and keep in good repair, condition, working order and efficiency (ordinary wear and tear excepted) all of its Properties, including, without limitation, all equipment, machinery and facilities, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect;

(c) promptly perform or make reasonable and customary efforts to cause to be performed, in accordance with industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in its Properties, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and

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(d) to the extent the Borrower is not the operator of any Property, the Borrower shall use commercially reasonable efforts to cause the operator of such Property to comply with this Section 8.06 in accordance with customary industry practices.

Section 8.07 Insurance. Subject to Section 8.20, the Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, insurance (i) in such amounts and against such risks as are customarily maintained by companies of similar size engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance), and (ii) in accordance with all Governmental Requirements, including, without limitation, Flood Insurance, if required. Subject to Section 8.20, insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to the DIP Agent (on behalf of the Lenders) as its interests may appear, and such policies shall name the DIP Agent as an “additional insured” (in the case of liability insurance) or “lender’s loss payable” (in the case of property insurance) on behalf of the Lenders, and provide that the insurer will give at least thirty (30) days’ prior notice of any cancellation to the DIP Agent. Each of the parties hereto acknowledges and agrees that any increase, extension or renewal of any of the Commitments or Loans (other than as contemplated in the definition of “Scheduled Maturity Date”) or the making of any new, additional or incremental facilities shall be subject to (and conditioned upon) the prior delivery to the DIP Agent of all Flood Zone Documentation.

Section 8.08 Books and Records; Inspection Rights. The Borrower will, and will cause each Subsidiary to maintain financial records in accordance with GAAP. The Borrower will, and will cause each Subsidiary to, permit any representatives designated by the DIP Agent or any Lender, upon reasonable prior notice and during normal business hours (unless an Exigent Circumstance or an Event of Default then exists), at the Loan Parties’ expense, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its Responsible Officers and independent accountants, all at such reasonable times (unless an Exigent Circumstance or Event of Default then exists) and as often as reasonably requested (*provided* that the DIP Agent shall give the Borrower reasonable advance notice of any proposed discussion with such accountants (unless an Exigent Circumstance or an Event of Default then exists) and permit the Borrower and its representatives to be present during such discussions).

Section 8.09 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Agreements. The Borrower will, and will cause each Subsidiary to, comply with all agreements, contracts and instruments binding on it or affecting its Properties or business, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 8.11 Environmental Matters.

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(a) The Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Subsidiary and each Subsidiary's Properties and operations to comply, with all applicable Environmental Laws, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; (ii) not Release or threaten to Release, and shall cause each Subsidiary not to Release or threaten to Release, any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties or any other property offsite the Property to the extent caused by the Borrower's or any of its Subsidiaries' operations except in compliance with applicable Environmental Laws, if the Release or threatened Release could reasonably be expected to have a Material Adverse Effect; (iii) timely obtain, file or prepare, and shall cause each Subsidiary to timely obtain, file or prepare, all Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Subsidiaries' Properties, except where such failure to obtain or file could not reasonably be expected to have a Material Adverse Effect; (iv) promptly commence and diligently prosecute to completion, and shall cause each Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the **"Remedial Work"**) in the event any Remedial Work is required or reasonably necessary under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Subsidiaries' Properties, if failure to commence and diligently prosecute to completion could reasonably be expected to have a Material Adverse Effect; (v) conduct, and cause its Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for material damages or compensation; and (vi) establish and implement, and shall cause each Subsidiary to establish and implement, such procedures as may be necessary to continuously determine and assure that the Borrower's and its Subsidiaries' obligations under this Section 8.11(a) are timely and fully satisfied, which failure to establish and implement such procedures could reasonably be expected to have a Material Adverse Effect.

(b) The Borrower will, and will cause each Subsidiary to, provide existing Phase I site assessments, to the extent they are available, upon request by the DIP Agent or the Lenders, in connection with any future acquisitions of Properties; *provided* that for the avoidance of doubt, there shall be no obligation under this Section for the Borrower to obtain such assessments.

Section 8.12 Further Assurances.

(a) The Borrower at its sole expense will, and will cause each Subsidiary to, promptly execute and deliver to the DIP Agent all such other documents, agreements and instruments reasonably requested by the DIP Agent or the Required Lenders to comply with, cure any defects or accomplish the conditions precedent, covenants and agreements of the Borrower or any Subsidiary, as the case may be, in the Loan Documents, including the Notes, or to further evidence and more fully describe the Collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Security Instruments, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created

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pursuant to this Agreement, the Interim DIP Order or the Final DIP Order or any of the Security Instruments or the priority thereof, or to make any recordings, file any notices or obtain any consents, all as may be reasonably necessary or appropriate, in the sole discretion of the DIP Agent, in connection therewith.

(b) Pursuant to the terms of the DIP Orders, no filings or other action (including the taking of possession or control) will be necessary to perfect or protect the Liens and security interests created pursuant to this Agreement, the DIP Orders or any other Security Instrument. Upon entry by the Bankruptcy Court, the Liens and security interests created by the DIP Orders shall automatically constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Collateral covered thereby (including after-acquired Collateral), in each case free of all Liens other than Liens permitted under Section 9.03, and prior and superior to all other Liens other than as provided in the DIP Orders. Notwithstanding the foregoing, upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions requested, with respect to any Material Real Property and any other tangible and intangible personal Property of the Borrower or any Loan Party, in each case constituting Collateral, to cause such Material Real Property and Collateral to be subject to a Lien pursuant to the Security Instruments or the DIP Order or to evidence the Lien on such Property, including to execute and deliver such Security Instruments (in proper form for filing, registration or recordation, as applicable) as are requested by the DIP Agent or the Required Lenders, and take such actions necessary or advisable to subject such Property to a Lien or evidence of the Lien on such Property pursuant to the Security Instruments.

(c) Upon the reasonable request of the Required Lenders, the Borrower and each of its Subsidiaries shall take any additional actions required, if any, to cause all of its right, title and interest in each Hedging Agreement to which it is a party to be collaterally assigned to the DIP Agent, for the benefit of the Secured Parties, and shall, if requested by the DIP Agent or the Required Lenders, use its commercially reasonable efforts to cause each such agreement or contract to (i) expressly permit such assignment and (ii) upon the occurrence of any default or event of default under such agreement or contract, (A) to permit the Lenders to cure such default or event of default and assume the obligations of such Loan Party under such agreement or contract and (B) to prohibit the termination of such agreement or contract by the counterparty thereto if the Lenders assume the obligations of such Loan Party under such agreement or contract and the Lenders take the actions required under the foregoing clause (A).

Section 8.13 Title Information. If the Borrower or any Subsidiary acquires any new pipeline and processing Properties for consideration in excess of \$5,000,000, individually or in the aggregate, the Borrower shall, or shall cause such Subsidiary to, provide promptly (and in any event within 30 days (or such longer period as may be reasonably acceptable to the DIP Agent (acting at the direction of the Required Lenders))), title information regarding such new pipeline and processing Properties to the DIP Agent. The Borrower shall, within sixty (60) days of notice from the DIP Agent (or such later date as the DIP Agent may agree in its sole discretion) that title defects or exceptions exist with respect to such additional Properties, either (i) cure any such title defects or exceptions (including defects or exceptions as to priority) which are not permitted by Section 9.03 raised by such information to the reasonable satisfaction of the DIP Agent, or (ii) deliver title information in form and substance acceptable to the DIP Agent

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(acting at the direction of the Required Lenders) so that the DIP Agent shall have received, together with title information previously delivered to the DIP Agent, title information reasonably satisfactory to the DIP Agent relative to the pipeline and processing Properties of the Borrower and its Subsidiaries.

Section 8.14 [Reserved].

Section 8.15 [Reserved].

Section 8.16 Ratings. The Borrower shall use commercially reasonable efforts to obtain a rating for the Credit Facility from both S&P and Moody's on or prior to the hearing to consider approval of the Final DIP Order; *provided* that if the Borrower is unable to obtain both ratings for the Credit Facility on or prior to such date, the Borrower shall (i) thereafter use its commercially reasonable efforts to obtain both ratings for the Credit Facility as soon as possible, and (ii) promptly provide to the DIP Agent any other information, documentation or other evidence reasonably requested by the DIP Agent or the Required Lenders in connection with the subject matter of this Section 8.16.

Section 8.17 ERISA Compliance. The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the DIP Agent (a) promptly after the filing thereof by the Borrower or any Subsidiary with the United States Secretary of Labor or the Internal Revenue Service (or if filed by a third party, promptly after the Borrower or a Subsidiary becomes aware of such filing), copies of each annual and other report with respect to each Plan or any trust created thereunder, and (b) promptly upon becoming aware of the occurrence of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by the President or the principal Financial Officer, the Subsidiary or the ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, the Subsidiary or the ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

Section 8.18 [Reserved].

Section 8.19 [Reserved].

Section 8.20 Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, as the case may be, each of the items set forth on Schedule 8.20, in each case on or prior to the date specified in such Schedule for such item or such later date as the DIP Agent may determine and agree to in writing in its sole discretion.

Section 8.21 Use of Proceeds. The Borrower shall use the proceeds from the Loans and the issuance of the Letters of Credit hereunder solely (i) to finance working capital and for general corporate purposes of the Borrower and its Subsidiaries (including to conduct the Section 363 Sale process and including Professional Fees approved by the Bankruptcy Court), to the extent such expenses are of the kind described in and in amounts shown in the Approved Budget (subject to Permitted Variances) and including the Roll-Up of Prepetition Term Loans as provided in Section 2.01(d) and the cash collateralization of the Letters of Credit pursuant to

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Section 2.07(j), (ii) to deem to be cancelled and reissue the Prepetition Letters of Credit as provided in Section 2.07(b), (iii) to pay fees, costs and expenses incurred by the DIP Agent and the Lenders in connection with the Transactions and other fees, costs and expenses of the DIP Agent and the Lenders to the extent reimbursable hereunder, (iv) to make adequate protection payments as permitted or required by the DIP Orders, and (v) to fund the Carve-Out in accordance with the DIP Orders. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of the Loans or the Letters of Credit hereunder be used to pay [Professional Fees] incurred in connection with a Prohibited Purpose (as defined in the DIP Orders). Nothing in this Section 8.22 shall be construed to waive the DIP Agent's or any Lender's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court.

Section 8.22 Lender Calls. Upon request of the DIP Agent at the direction of the Required Lenders, the Borrower shall arrange for conference calls, which call shall occur not more frequently than once per calendar week, discussing and analyzing the Approved Budget (or other 13-week cash flow forecasts furnished pursuant to Section 8.01) for the prior week, the Variance Reports, the financial condition, business operations, liquidity, business plan, contract negotiations and projections of each of the Loan Parties, the status of the Chapter 11 Cases, the status of the sale process and progress in achieving the Case Milestones.

Section 8.23 Case Milestones. Each Loan Party shall ensure that each of the milestones set forth below (the "**Case Milestones**") is achieved in accordance with the applicable timing referred to below (or such later dates as approved in writing by the Required Lenders):

(a) On the Petition Date, the Loan Parties shall have filed a motion seeking approval of the DIP Orders, in form and substance acceptable to the Required Lenders in all respects.

(b) Not later than five (5) Business Days after the Petition Date (or such later date approved in writing by the Required Lenders), the Interim DIP Order shall have been entered by the Bankruptcy Court and such Interim DIP Order shall be in full force and effect and shall not have been (i) vacated, reversed, or stayed, or (ii) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(c) Not later than the date that is forty (40) days following the Petition Date (or such later date approved in writing by the Required Lenders), the Bankruptcy Court shall have entered the Final DIP Order and such Final DIP Order shall be in full force and effect and shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified except as otherwise agreed to in writing by the Required Lenders.

(d) Not later than fifty (50) days after the Petition Date, the Loan Parties shall have received non-binding first-round indications of interest from potential purchasers of all or substantially all of the Loan Parties' assets.

(e) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have not reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue a Section 363 Sale. In connection with a Section 363 Sale, the Loan Parties and the

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Required Lenders shall negotiate in good faith a reasonable wind-down budget (the “**Wind-Down Budget**”) to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary or appropriate to wind down the Loan Parties’ estates on a reasonable and appropriate timeline.

(f) If, pursuant to Section 8.23(e), a Section 363 Sale is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed a motion in the Bankruptcy Court in form and substance acceptable to the Required Lenders, seeking approval of (a) a sale (the “**Sale Transaction**”) of substantially all assets of the Loan Parties, and (b) bidding procedures (the “**Bid Procedures**”) and related relief in connection with the Sale Transaction (the “**Bid Procedures and Sale Motion**”).

(ii) Not later than eighty (80) days after the Petition Date, (a) the Loan Parties shall have scheduled a hearing on the Bid Procedures Motion, and (b) the Loan Parties shall have obtained entry of an order, in form and substance acceptable to the Required Lenders (the “**Bid Procedures Order**”), approving the Bid Procedures and setting a date for the hearing to approve the Sale Transaction (the “**Sale Hearing**”).

(iii) Not later than one hundred (100) days after the Petition Date, the Loan Parties shall have established the final deadline to receive qualified bids, and shall have received such qualified bids (the “**Bid Deadline**”).

(iv) Not later than two (2) weeks after the Bid Deadline, the Loan Parties shall have obtained entry of a Final Order by the Bankruptcy Court (the “**Sale Approval Order**”), in form and substance acceptable to the Required Lenders in all respects.

(v) Not later than the earlier of (i) thirty (30) days after entry of the Sale Approval Order and (ii) the Maturity Date, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by payment of such DIP Term Loans and Roll-Up Loans in full, in cash (subject to the Wind-Down Budget).

(g) If, within fifty (50) days after the Petition Date, the Loan Parties and the Required Lenders have reached an agreement as to an Acceptable Plan, then the Loan Parties shall pursue such Acceptable Plan. If pursuant to this Section 8.23(g), an Acceptable Plan is pursued:

(i) Not later than fifty five (55) days after the Petition Date, the Loan Parties shall have filed in the Bankruptcy Court an Acceptable Plan, a corresponding disclosure statement (the “**Disclosure Statement**”), and a motion seeking approval of the Disclosure Statement, in each case, in form and substance acceptable to the Required Lenders.

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(ii) Not later than ninety five (95) days after the Petition Date, the Loan Parties shall have scheduled a hearing on approval of the Disclosure Statement and obtained entry of the order by the Bankruptcy Court approving the Disclosure Statement in form and substance acceptable to the Required Lenders.

(iii) Not later than one hundred forty five (145) days after the Petition Date, the Loan Parties shall have scheduled a hearing to confirm the Acceptable Plan and obtained entry by the Bankruptcy Court of the order confirming the Acceptable Plan (the “**Confirmation Order**”), in form and substance acceptable to the Required Lenders.

(h) Not later than thirty (30) days after entry of the Confirmation Order, the Loan Parties shall have discharged the DIP Term Loans and Roll-Up Loans by (i) payment of such DIP Term Loans and Roll-Up Loans in full, in cash or (ii) such other treatment as acceptable to the Required Lenders.

Section 8.24 Certain Bankruptcy Matters; Case Documents.

(a) The Loan Parties shall, and shall cause each of their Subsidiaries to, comply (i) in all respects, after entry thereof, with all of the requirements and obligations set forth in the DIP Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) in all respects, after entry thereof, with each order of the type referred to in clause (b) of the definition of “Approved Bankruptcy Court Order”, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (b) of the definition of “Approved Bankruptcy Court Order,” and (iii) in all material respects, after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Loan Parties’ “first day” and “second day” relief obtained in the Chapter 11 Cases, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time with the approval of the DIP Agent and the Required Lenders.

(b) The Borrower shall provide at least five (5) Business Days’ (or such shorter notice acceptable to the Required Lenders in their sole discretion) prior written notice to the DIP Agent or its advisors prior to any assumption or rejection of any Loan Party’s Material Contracts pursuant to Section 365 of the Bankruptcy Code, and no such Material Contract shall be assumed or rejected, if such assumption or rejection adversely impacts the Collateral, any Liens thereon or any superpriority claims payable therefrom (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims).

(c) As soon as practicable in advance of filing with the Bankruptcy Court of any document, motion or pleading relating to or impacting (i) any rights or remedies of the DIP Agent or any Lender, (ii) the Credit Facility, the DIP Orders, the Cash Management Order, the Loan Documents, the “Loan Documents” as defined in the Prepetition Term Loan Agreement and the “Loan Documents” as defined in the Prepetition Revolving Loan Agreement (including the Loan Parties’ (as defined therein) obligations thereunder), (iii) the Collateral, any Liens thereon or any superpriority claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or superpriority claims), (iv) use of cash collateral,

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(v) debtor-in-possession financing, (vi) adequate protection or otherwise relating to the Prepetition Facilities, (vii) any Chapter 11 Plan, (viii) any Section 363 Sale, or (ix) any transaction outside of the ordinary course of business with any Loan Party, the Loan Parties will deliver to the DIP Agent for delivery to [each Lender] all such documents to be filed and provide the DIP Agent and the Lenders with a reasonable opportunity to review and comment on all such documents.

(d) Promptly following receipt thereof (and in any event within one (1) Business Day after receipt thereof), the Loan Parties shall deliver to the professional advisors to the Lenders copies of all formal proposals, letters of interest, letters of intent, bids, agreements and any final proposed definitive documentation for any sale of all or any material portion of its the Loan Parties' assets or any other investment pursuant to which additional capital is to be received by the Loan Parties.

(e) It is understood that the materials provided to the DIP Agent and the Lenders pursuant to Sections 8.23(b) and (c) will not be identified by the Borrower as "Public" information and may be treated by the DIP Agent as being suitable only for posting on a portion of the Platform not designated "Public Side Information". It is understood that the materials provided to the DIP Agent and the Lenders' professional advisors pursuant to Section 8.23(d) will be provided solely on a "professional eyes only" basis.

ARTICLE IX NEGATIVE COVENANTS

Until Payment in Full, the Borrower (on behalf of itself and its Subsidiaries) and each Guarantor by its execution of the Guaranty and Collateral Agreement) covenants and agrees with the DIP Agent, any Issuing Banks and the Lenders that:

Section 9.01 Budget Variances. As of any Variance Testing Date, the Loan Parties shall not allow the [Total Cash Receipts] or the [Total Cash Disbursements] (in each case, as such terms are used in the applicable Approved Budget) to exceed the aggregate amount forecasted therefor in the Approved Budget for such [Testing Period] by more than the Permitted Variances for the period applicable thereto under Annex III (the "**Permitted Variances**").

Section 9.02 Indebtedness. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations arising under the DIP Orders and the Loan Documents, or with respect to any Bank Products, or any guaranty of or suretyship arrangement for the Secured Obligations arising under the Loan Documents, or with respect to any Bank Products;

(b) Indebtedness under Capital Leases or that constitutes Purchase Money Indebtedness; *provided* that the aggregate amount of all Indebtedness described in this Section 9.02(b) at any one time outstanding shall not to exceed \$[500,000] in the aggregate;

(c) Indebtedness associated with performance bonds, bid bonds, surety bonds, appeal bonds or customs bonds required in the ordinary course of business or in connection with

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the enforcement of rights or claims of the Borrower or any Subsidiary or in connection with judgments that do not result in a Default;

(d) unsecured intercompany Indebtedness between the Borrower and any Subsidiary or between Subsidiaries to the extent permitted by Section 9.05(g); *provided* that such Indebtedness is not held, assigned, transferred, negotiated or pledged to any Person other than the Borrower or one of its Wholly-Owned Subsidiaries, and, *provided, further*, that any such Indebtedness owed by a Loan Party shall be subordinated to the Secured Obligations on terms set forth in the Guaranty and Collateral Agreement;

(e) Indebtedness constituting a guaranty by any Loan Party of Indebtedness permitted to be incurred by any other Loan Party under this Section 9.02; *provided* that if the Indebtedness being guaranteed is subordinated to the Secured Obligations, such guaranty shall be subordinated to the Guarantee of the Secured Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such guaranteed Indebtedness;

(f) endorsements of negotiable instruments for deposit or collection in the ordinary course of business;

(g) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or as otherwise approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order, so long as such Indebtedness shall not exceed the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the underlying policy;

(h) Indebtedness (i) arising from the honoring by a bank or other financial institution of a check, draft, payment order or other debit drawn, presented or issued against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of its incurrence or (ii) arising under any Bank Products provided by a bank or other financial institution to the Loan Parties in the ordinary course of business and pursuant to, or in accordance with, the Cash Management Order;

(i) other unsecured Indebtedness not to exceed [\$1,000,000] in the aggregate at any one time outstanding;

(j) Indebtedness outstanding on the Effective Date consisting of Prepetition Term Loans incurred under the Prepetition Term Loan Facility and Prepetition Revolving Loans incurred under the Prepetition Revolving Loan Facility;

(k) Indebtedness outstanding on the Effective Date that is disclosed to the Lenders in Schedule 9.02.

Section 9.03 Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except:

(a) Liens securing the payment of any Secured Obligations pursuant to the DIP Orders and other Security Instruments;

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(b) Excepted Liens;

(c) Liens securing Capital Leases and Purchase Money Indebtedness permitted by Section 9.02(b) but only on the Property under lease or the Property purchased with such Purchase Money Indebtedness, as applicable;

(d) Liens on proceeds of Letters of Credit permitted to be posted in connection with Hedging Agreements permitted by Section 9.17;

(e) (i) pledges and deposits of cash in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to such Person and (ii) Liens on proceeds of insurance policies securing Indebtedness permitted under Section 9.02(g);

(f) Liens on cash earnest money or escrowed deposits in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 9.05, to be applied against the purchase price for and indemnities with respect to such Investment, solely to the extent such Investment would have been permitted on the date of the creation of such Lien;

(g) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or assets of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary, as the case may be; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(h) Liens on Collateral securing Indebtedness permitted by Section 9.02(i), including adequate protection Liens granted pursuant to the DIP Orders, which Liens, in each case, shall rank the same priorities as set forth in the DIP Orders;

(i) other Liens securing obligations arising in the ordinary course of business, other than Indebtedness for borrowed money, outstanding in an aggregate amount not to exceed [\$1,000,000];

(j) Liens in the form of cash collateral (withdrawn from the Letter of Credit Account pursuant to a Letter of Credit Withdrawal Notice) securing obligations owed to suppliers and vendors in an aggregate amount not to exceed the Alternate Cash Collateral Amount; *provided* that the Borrower shall use commercially reasonable efforts to ensure that such cash collateral will continue to secure the Secured Obligations (other than reimbursement obligations under Letters of Credit) on a junior basis under arrangements (including security documentation and cash management) that are acceptable to the DIP Agent and the Required Lenders (it being understood and agreed that in any event the Loan Parties' interests in such cash collateral, including the residual value of such cash collateral or the remaining interests of the Loan Parties therein will continue to constitute Collateral that secures the Secured Obligations); and

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(k) Liens outstanding as of the Effective Date that are disclosed to the Lenders in Schedule 9.03.

Section 9.04 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, return any capital to its stockholders or make any distribution of its Property to its Equity Interest holders, except Subsidiaries may declare and pay dividends to the Loan Parties.

Section 9.05 Investments, Loans and Advances. The Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding, or enter into any agreement to make, any Investments in or to any Person, except that the foregoing restriction shall not apply to:

(a) Investments as of the Effective Date that are disclosed to the Lenders in Schedule 9.05;

(b) accounts receivable arising in the ordinary course of business consistent with past practice;

(c) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof;

(d) commercial paper maturing within one year from the date of creation thereof rated in one of the two highest grades by S&P or Moody's;

(e) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively;

(f) deposits in money market funds investing exclusively in Investments described in Section 9.05(c), Section 9.05(d) or Section 9.05(e);

(g) Investments (i) made by the Borrower in or to the Guarantors, and (ii) made by any Subsidiary in or to the Borrower or any Guarantor;

(h) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under this Section 9.05 owing to the Borrower or any Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Subsidiaries; *provided* that the Borrower shall give the DIP Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this Section 9.05(h) exceeds \$[100,000];

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- (i) Investments constituting Indebtedness permitted under Section 9.02;
- (j) credit provided to new or existing customers of the Loan Parties for the costs and expenses of extending service to such customers and for which such customers are contractually obligated to reimburse the Loan Party providing such credit in the ordinary course of business;
- (k) Investments in Hedging Agreements permitted by Section 9.17;
- (l) Investments consisting of the [licensing or contribution] of Intellectual Property in the ordinary course of business; and
- (m) other Investments not to exceed [\$] in the aggregate at any time.

Section 9.06 Nature of Business: International Operations. The Borrower will not, and will not permit any Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Petition Date. From and after the date hereof, the Borrower and its Subsidiaries will not acquire or make any other expenditure (whether such expenditure is capital, operating or otherwise) in or related to, any real Property not located within the geographical boundaries of the United States.

Section 9.07 Proceeds of Loans. The Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by Section 8.21. Neither the Borrower nor any Person acting on behalf of the Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board, in each case as now in effect or as the same may hereinafter be in effect.

Section 9.08 ERISA Compliance. The Borrower will not, and will not permit any Subsidiary to, at any time:

- (a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code;
- (b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto;
- (c) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that contributions to or the obligation to contribute to may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, including a multiemployer plan as defined in section 3(37) or 4001(a)(3)

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of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code; and

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to the Borrower or a Subsidiary or with respect to any ERISA Affiliate of the Borrower or a Subsidiary if such Person sponsors, maintains or contributes to, or at any time in the six year period preceding such acquisition has sponsored, maintained, or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, (i) that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA or (ii) that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such plan allocable to such benefit liabilities.

Section 9.09 Sale or Discount of Receivables. Except (a) sales otherwise permitted pursuant to Section 9.11 and (b) for receivables obtained by the Borrower or any Subsidiary from the settlement of joint interest billing accounts in the ordinary course of business or discounts granted to settle collection of accounts receivable or the sale of defaulted accounts arising in the ordinary course of business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or accounts receivable.

Section 9.10 Mergers, Etc. The Borrower will not, and will not permit any Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a “consolidation”), or liquidate or dissolve, except (a) with the consent of the DIP Agent or the Required Lenders, or (b) that the Borrower or any Subsidiary may sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person pursuant to one or more Qualified APAs, the proceeds of which are remitted to the DIP Agent concurrently with the consummation of such disposition in an amount necessary to repay all of the Secured Obligations concurrently with the consummation of such disposition, and which results in the Payment in Full of all of the Secured Obligations.

Section 9.11 Sale of Properties. The Borrower will not, and will not permit any Subsidiary to, sell, assign, farm-out, convey or otherwise transfer any Property except for:

- (a) dispositions of cash and Cash Equivalents in the ordinary course of business and in connection with transactions permitted by this Agreement;
- (b) the sale of inventory in the ordinary course of business;
- (c) the sale or transfer of obsolete or worn out property and property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registration or application for registration of any Intellectual Property

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that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned or be invalidated), whether now owned or hereafter acquired, in the ordinary course of business or is replaced by replacement property of at least comparable value and use;

(d) Restricted Payments permitted by Section 9.04 and Liens permitted by Section 9.03;

(e) the transfer of Property to another Loan Party;

(f) the transfer of Property occurring in connection with a transaction permitted by, and made in compliance with, the provisions of Section 9.10;

(g) dispositions of accounts receivables in connection with the collection or compromise thereof in the ordinary course of business to the extent permitted under Section 9.09;

(h) grants of Leases, subleases, licenses or sublicenses (including the provision of software under an open source license), easements, rights of way or similar rights or encumbrances in each case in the ordinary course of business and which do not materially interfere with the business of the Borrower and its Subsidiaries; and

(i) transfers of Property that has suffered a Casualty Event upon receipt of the Net Cash Proceeds of such Casualty Event;

(j) other Asset Sales of the Properties listed on Schedule 9.11 for fair market value; *provided* that such Asset Sale shall have been approved by the Bankruptcy Court pursuant to an Approved Bankruptcy Court Order in form and substance satisfactory to the Required Lenders and the Net Sale Proceeds thereof shall be applied in accordance with Section 3.04(b)(ii); and

(k) other Asset Sales pursuant to a *de minimis* asset sales procedures order that is an Approved Bankruptcy Court Order; *provided* that the Net Sale Proceeds thereof in excess of [\$] in the aggregate for all such Asset Sales shall be applied in accordance with Section 3.04(b)(ii).

Section 9.12 Environmental Matters. With respect to the Properties and any operations thereat or associated therewith, the Borrower will not, and will not permit any Subsidiary to, be in violation of Environmental Law, have any Release or threatened Release of Hazardous Materials other than those that are in compliance with Environmental Law, allow any exposure to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation, or be required under Environmental Law to perform any Remedial Work.

Section 9.13 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property or the rendering of any service, with any Affiliate (other than the Borrower or any Guarantor), except (a) Restricted Payments permitted by Section 9.04, (b) Investments permitted by Section 9.05, and (c) transactions that are otherwise permitted under

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this Agreement and the Approved Bankruptcy Court Orders, and are upon fair and reasonable terms no less favorable to it, when taken as a whole, than it would obtain in a comparable arm's length transaction with a Person not an Affiliate.

Section 9.14 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary. The Borrower shall not, and shall not permit any Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with Section 9.11(f), Section 9.11(g) or Section 9.15. Neither the Borrower nor any Subsidiary shall have any Foreign Subsidiaries or any Subsidiaries that are not Wholly-Owned Subsidiaries.

Section 9.15 Limitation on Issuance of Equity Interests. The Borrower shall not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for Equity Interests issued to another Loan Party. The Borrower and the Subsidiaries shall comply with Section 8.12 with respect to any such issued Equity Interests.

Section 9.16 Negative Pledge Agreements; Dividend Restrictions. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any material agreement or arrangement (other than (a) the Loan Documents, (b) the loan documents for the Prepetition Facilities (c) Capital Leases creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Capital Lease, (d) documents evidencing or securing Purchase Money Indebtedness creating Liens permitted by Section 9.03(c), but then only on the Property that is the subject of such Purchase Money Indebtedness, (e) documents creating Liens which are described in clauses (g) or (h) of the definition of "Excepted Liens", but then only on the Property that is the subject of the applicable lease or license described in such clause (g) or (h)), (f) customary restrictions and conditions on transfers and investments contained in any agreement relating to the sale of any asset or any subsidiary pending the consummation of such sale, (g) [reserved], (h) in the case of any assets acquired after the Effective Date, any agreement in effect at the time of such acquisition which pertains to such assets and only such assets and is assumed in connection with such acquisition, so long as such agreement was not entered into in contemplation of such acquisition, and (i) customary provisions in joint venture agreements and other similar agreements permitted by Section 9.05 and applicable to joint ventures and Equity Interests therein) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property in favor of the DIP Agent and the Lenders, or that requires the consent of or notice to other Persons in connection therewith, or that restricts any Subsidiary from paying dividends or making distributions to, making Investments in, or transferring any of its Property to the Borrower or any Guarantor, or that requires the consent of or notice to other Persons in connection therewith.

Section 9.17 Hedging Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Hedging Agreements with any Person other than Hedging Agreements in respect of commodities or interest rates (i) with an Approved Counterparty and (ii) that are entered into for the purpose of hedging exposure to interest rates or commodity prices and that are not for speculative purposes. In no event shall any Hedging Agreement contain any requirement, agreement or covenant for the Borrower or any Subsidiary to post

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collateral or margin to secure their obligations under such Hedging Agreement or to cover market exposures, other than Letters of Credit (and the proceeds thereof) the face amounts of which do not exceed \$[5,000,000] in the aggregate at any time.

Section 9.18 Holding Company. The Borrower will remain a holding company and will not own any real property, immovable property, or other assets of material value other than Equity Interests in Subsidiaries, furniture, furnishings and equipment acquired and maintained in the ordinary course of business, Investments to the extent permitted hereunder, assets acquired that are promptly, and in any event within 30 days of acquisition by the Borrower, transferred, contributed or otherwise assigned by the Borrower to one or more of the other Loan Parties, and interests in contracts customarily entered into by the Borrower in the ordinary course of its business.

Section 9.19 Sale and Leaseback. The Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

Section 9.20 Amendments to Organization Documents, Material Contracts, Fiscal Year End; Prepayments of other Indebtedness.

(a) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organization Documents.

(b) The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) any Material Contract in a manner that would be adverse to the Lenders in any material respect.

(c) The Borrower shall not, and shall not permit any Subsidiary to, change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

(d) The Borrower shall not, and shall not permit any Subsidiary to, make (or give any notice in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any outstanding prepetition Indebtedness, except as otherwise permitted by this Agreement, the DIP Orders or any Approved Bankruptcy Court Order.

Section 9.21 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 7.26, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law,

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or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to any Lender any certification or other evidence requested from time to time by such Lender confirming the Borrower's and the Subsidiaries' compliance with this Section 9.21(a)).

(b) The Borrower shall not, and shall not permit any Subsidiary to, cause or permit any of the funds of the Borrower or any Subsidiary that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Governmental Requirement.

Section 9.22 Embargoed Person. The Borrower shall not, and shall not permit any Subsidiary to, permit (a) any of the funds or Properties of the Borrower or any Subsidiary that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Order or Governmental Requirement promulgated thereunder, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement, or the Loans would be in violation of a Governmental Requirement, or (ii) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower or any Subsidiary, with the result that the investment in the Borrower or any Subsidiary (whether directly or indirectly) is prohibited by a Governmental Requirement or the Loans are in violation of a Governmental Requirement.

Section 9.23 Deposit Accounts, Securities Accounts and Commodity Accounts. Subject to Section 8.20, the Borrower will not, and will not permit any Subsidiary to, deposit any funds, securities or commodities in any Deposit Account (other than payroll Deposit Accounts consistent with current practice and Deposit Accounts used solely for any healthcare program), Securities Account or Commodity Account (each, as defined in the Uniform Commercial Code, as it may be amended, from time to time in effect in the State of New York), as applicable, unless such account is subject to a valid Lien in favor of the DIP Agent for the benefit of the Secured Parties and a control agreement in form and substance satisfactory to the Required Lenders.

Section 9.24 Southcross Holdings Receivables. The Borrower will not, and will not permit any Subsidiary to, permit any account receivable owing from Southcross Holdings to the Borrower to be more than 30 days past its due date.

Section 9.25 Additional Bankruptcy Matters. Without the Required Lenders' prior written consent, the Borrower will not, and will not permit any Subsidiary to, do any of the following:

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(a) assert or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such) or the Prepetition Secured Parties, unless such claim or cause of action is in connection with the enforcement of the Loan Documents against any of the Lenders;

(b) subject to the terms of the DIP Orders, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the DIP Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default (provided that any Loan Party may contest or dispute whether an Event of Default has occurred); or

(c) except as expressly provided or permitted hereunder (including, without limitation, to the extent expressly identified in any line item in the Approved Budget) or, with the prior consent of the Required Lenders, as provided pursuant to any other Approved Bankruptcy Court Order, make any payment or distribution to any Affiliate that is not a Loan Party or to any insider of the Borrower outside of the ordinary course of business; and

(d) notwithstanding anything to the contrary in this Agreement, the DIP Orders or any of the other Loan Documents, propose, adopt, support, consummate or effect any Chapter 11 Plan, plan of liquidation, sale, structured dismissal or any other resolution of the Cases, unless such case resolution provides for the Payment in Full in cash on the effective date thereof of the Secured Obligations (including any Loans held by the Lenders).

Section 9.26 Other Superpriority Claims. The Borrower will not, and will not permit any Subsidiary to, incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the DIP Agent and the Lenders against the Loan Parties hereunder, except for the Carve-Out or as otherwise provided in the DIP Orders.

ARTICLE X EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. One or more of the following events shall constitute an “**Event of Default**”:

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

(b) The Borrower shall fail to pay any interest on any Loan or fee or other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party, any Subsidiary of the Borrower or Holdings in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or

waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) The Borrower or any Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 8.01(j), Section 8.02, Section 8.03, Section 8.07, Section 8.20, Section 8.23, Section 8.24 or in Article IX or (ii) 8.01(q) and such failure in respect of this clause (ii) shall continue unremedied for two (2) Business Days.

(e) Any Loan Party or any Subsidiary of the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of fifteen (15) days after the earlier to occur of (i) notice thereof from the DIP Agent to the Borrower (which notice will be given at the request of any Lender) or (ii) a Responsible Officer, or a Responsible Officer of such Subsidiary, otherwise becoming aware of such default.

(f) The Borrower or any Subsidiary shall fail to make any payment of principal of or interest on any postpetition Material Indebtedness, when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace.

(g) Except with respect to obligations that are unenforceable as a result of the commencement of the Chapter 11 Cases and defaults that occur solely as a result of the filing of the Chapter 11 Cases, any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Subsidiary to make an offer in respect thereof.

(h) The LC Cash Collateralization Amount, at any time, exceeds the Letter of Credit Deposit Amount.

(i) [Reserved]

(j) The Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) (i) One or more postpetition judgments for the payment of money in an aggregate amount in excess of \$1,000,000 or (ii) any one or more non-monetary postpetition judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, shall be rendered against the Borrower, any Subsidiary or any combination thereof and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof.

(l) The Loan Documents after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding

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and enforceable in accordance with their terms against any Loan Party thereto, or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any of the Collateral purported to be covered thereby, except to the extent permitted by the terms of this Agreement, or any Loan Party or any of their Affiliates shall so state in writing.

(m) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when together with all other ERISA Events that have occurred, could reasonably be expected to result in the liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$1,000,000 in the aggregate.

(n) A Change in Control shall occur.

(o) (i) Any Debtor shall fail to comply with any of the provisions of the DIP Orders, any order related to the Credit Facility, cash management or bank accounts, or any Chapter 11 Plan, or any other Bankruptcy Court order that affects or may reasonably be expected to affect any of the rights, remedies, powers, privileges, claims or Liens of the DIP Agent or any other Secured Party;

(ii) unless otherwise approved by the DIP Agent or the Required Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to any Chapter 11 Case, and such order shall not be reversed or vacated;

(iv) a trustee, examiner or other responsible officer shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(v) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or the filing by a Debtor of a motion seeking any such relief, or the failure of a Debtor to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the Bankruptcy Court;

(vii) the Bankruptcy Court shall enter an order terminating the exclusive right of any Debtor to file a Chapter 11 Plan;

(ix) any or all Loan Parties shall enter into an agreement for, or any Debtor shall file (or support or fail to file responding materials opposing a motion by a third party seeking any such relief within the time frame provided for the filing of such response or objection by the respective court) a motion seeking, or the Bankruptcy Court shall enter, an order authorizing, a sale of all or substantially all of such Loan Party's assets for a cash price or other terms that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless the terms are otherwise acceptable to the Required Lenders;

(x) any Debtor shall file a motion seeking authority to consummate a sale of assets of such Debtor or any of its Subsidiaries (other than any such sale of assets that is permitted by the Loan Documents) outside the ordinary course of business, or any sale of any part of the Collateral pursuant to Section 363 of the Bankruptcy Code, in each case, that will not result in Payment in Full of all of the Secured Obligations and all of the Prepetition Obligations at the closing of such sale unless such sale is otherwise permitted under Section 9.11 or is otherwise acceptable to the Required Lenders;

(xi) without the prior written consent of the DIP Agent or the Required Lenders, any Debtor shall file a motion to alter, amend, vacate, supplement, or modify, in any respect, either of the DIP Orders or either of the DIP Orders is reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, *provided* that entry of the Final DIP Order shall not be deemed to reverse, modify, amend, stay or vacate the Interim DIP Order for purposes of this clause (xii);

(xii) the Bankruptcy Court shall enter an order granting any Person, other than the DIP Agent, relief from the automatic stay under the Cases, in either case, to permit enforcement on, foreclosure on or repossession of any Collateral or other assets of any Loan Party if such relief could reasonably be expected to have a Material Adverse Effect, or to permit the commencement or continuation of prepetition litigation against any Debtor for any purpose other than to liquidate the amount of a disputed claim involving potential liability not covered by insurance, which litigation could reasonably be expected to result in net liabilities in excess of \$250,000 or otherwise have a Material Adverse Effect;

(xiii) an order shall be entered for the substantive consolidation of the Estate of any Debtor with any other Person, unless such Person is another Debtor, and such order granting substantive consolidation provides that the assets of such Debtor shall remain subject to the Liens of the DIP Agent and Prepetition Agents securing the Secured Obligations and the Prepetition Obligations, respectively;

(xiv) any Debtor shall contest the validity or enforceability of the Credit Facility, any Debtor shall deny in writing that such Debtor has any further liability or obligation under the Credit Facility, or the DIP Agent or Secured Parties shall cease to have the benefit of the Liens granted by any of the DIP Orders once such orders have been made;

(xv) an order shall be entered by the Bankruptcy Court avoiding or requiring disgorgement by the DIP Agent or any other Secured Party of any amounts received in respect of the Secured Obligations or Prepetition Obligations;

(xvi) a Debtor shall file any motion or other request with the Bankruptcy Court seeking authority to use any cash proceeds of the DIP Collateral or the Prepetition Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code or other applicable law secured by a Lien upon any Collateral, in each case without the DIP Agent's prior written consent unless motion

contemplates the Payment in Full of the Secured Obligations immediately upon the consummation of the transactions contemplated thereby;

(xvii) except as permitted in the DIP Orders, the Bankruptcy Court enters any order in any of the Chapter 11 Cases granting to any Person a Superpriority Claim or Lien *pari passu* with or senior to that granted to the DIP Agent under the DIP Orders;

(xviii) any Loan Party shall file any action, suit or other proceeding or contested matter challenging the validity, perfection or priority of any Liens of the DIP Agent securing the Secured Obligations or any Liens of any Prepetition Agent securing the Prepetition Obligations, or the validity or enforceability of any of the Loan Documents or Prepetition Loan Documents, or asserting any Avoidance Claim against any of the Prepetition Secured Parties, or seeking to recover any monetary damages from the DIP Agent, any Lender, any of the Prepetition Secured Parties;

(xix) a Challenge (as defined in the DIP Orders) shall be filed by any party in interest and shall be sustained by the Bankruptcy Court, in whole or in part; or

(xx) the Bankruptcy Court shall grant relief under any motion or other pleading filed by any Debtor that results in the occurrence of an Event of Default; *provided* that the Loan Parties hereby agree that the DIP Agent shall be entitled to request an expedited hearing on any such motion and hereby consent to such expedited hearing (and the DIP Agent is authorized to represent to the Bankruptcy Court that the Loan Parties have consented to such expedited hearing on the motion);

(p) Any Case Milestone shall have not been met;

(q) Any Loan Party seeks to obtain Bankruptcy Court approval of a disclosure statement or Chapter 11 Plan other than a disclosure statement relating to, or a plan that is, an Acceptable Plan, or any of the Loan Parties or affiliates file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(r) Entry of an order approving a Section 363 Sale unless such order contemplates the Payment in Full of the DIP Facility upon consummation of such sale or such terms are otherwise acceptable to the Required Lenders; or

(s) The Interim DIP Order or Final DIP Order, as applicable, ceases to create a valid and perfected security interest and lien on the DIP Collateral.

Section 10.02 Remedies.

(a) Subject to the terms of the DIP Orders, in the case of an Event of Default, at any time thereafter during the continuance of such Event of Default, the DIP Agent may, and at the request of the Required Lenders, shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon

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the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower and the Guarantors accrued hereunder and under the Loan Documents shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrower and each Guarantor.

(b) In the case of the occurrence of an Event of Default, the DIP Agent and the Lenders will have all other rights and remedies available at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied, subject to the DIP Order (including the Remedies Notice Period (as defined therein)), the Carve-Out and, if applicable, the Wind-Down Budget:

(i) *first*, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the DIP Agent in its capacity as such;

(ii) *second, pro rata* to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities payable to the Lenders;

(iii) *third, pro rata* to payment of accrued interest on the Loans;

(iv) *fourth, pro rata* to payment of (A) principal outstanding on the DIP Term Loans, (B) Secured Obligations referred to in clause (c) of the definition of Secured Obligations owing to a Bank Products Provider, and (C) any other Secured Obligations (other than Roll-Up Loans);

(v) *fifth, pro rata* to payment of any superpriority adequate protection claims of the Prepetition Secured Parties on a pro rata basis;

(vi) *sixth*, to repay ratably the Prepetition Revolving Loans then outstanding, on the one hand, and the Roll-Up Loans and Prepetition Term Loans then outstanding, on the other hand (provided that funds allocated to the Roll-Up Loans and Prepetition Term Loans shall be applied to repay the Roll-Up Loans in full prior to the Prepetition Terms Loans); and

(vii) *seventh*, any excess, after all of the Secured Obligations shall have been indefeasibly paid in full in cash, shall be paid to the Borrower or as otherwise required by any Governmental Requirement.

Notwithstanding the foregoing, Bank Products shall be excluded from the application described above if the DIP Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products

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Provider Each Bank Products Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the DIP Agent pursuant to the terms of Article XI for itself and its Affiliates as if a “Lender” party hereto.

ARTICLE XI THE DIP AGENT

Section 11.01 Appointment and Authority. Each of the Lenders and each Issuing Bank hereby irrevocably appoints Wilmington Trust, National Association, to act on its behalf as the DIP Agent hereunder and under the other Loan Documents and authorizes the DIP Agent to take such actions on its behalf and to exercise such powers as are delegated to the DIP Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article XI are solely for the benefit of the DIP Agent, the Lenders and each Issuing Bank, and neither the Borrower nor any Subsidiary shall have any rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the DIP Agent is hereby expressly authorized to (a) execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Instruments and (b) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Secured Party.

Section 11.02

Section 11.03 Rights as a Lender. The Person serving as the DIP Agent hereunder shall, if applicable, have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the DIP Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the DIP Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the DIP Agent hereunder and without any duty to account therefor to the Lenders.

Section 11.04 Exculpatory Provisions.

(a) The DIP Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the DIP Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (it being understood that the term “agent” used herein and in the other Loan Documents with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine or any other applicable law; rather, 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);

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the DIP Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02 or 12.02); *provided* that the DIP Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the DIP Agent to liability, if the DIP Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable law including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the DIP Agent or any of its Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

(b) The DIP Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the DIP Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.02 and Section 10.02) or (ii) otherwise hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith INCLUDING ITS OWN ORDINARY NEGLIGENCE, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. The DIP Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to the DIP Agent by the Borrower, a Lender or an Issuing Bank.

(c) The DIP Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,

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effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the DIP Agent or as to those conditions precedent expressly required to be to the DIP Agent's satisfaction, (vi) the existence, value, perfection, or priority of any collateral security or the financial or other condition of the Loan Parties and the Subsidiaries or any other obligor or guarantor, or (vii) any failure by any Loan Party or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements, or other terms or conditions set forth herein or therein.

Section 11.05 Reliance by DIP Agent. The DIP Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the DIP Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the DIP Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The DIP Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 11.06 Delegation of Duties. The DIP Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the DIP Agent. The DIP Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XI and Section 12.03(b) and (c) shall apply to any such sub agent and to the Related Parties of the DIP Agent and any such sub agent, and shall apply to their respective as DIP Agent. The DIP Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the DIP Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 11.07 Resignation of DIP Agent. The DIP Agent may at any time give notice of its resignation to the Lenders, each Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a bank as a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring DIP Agent gives notice of its resignation, then the retiring DIP Agent may on behalf of the Lenders and each Issuing Bank, appoint a successor DIP Agent meeting the qualifications set forth above, *provided* that if no such successor DIP Agent has been appointed by the 30th day after the resigning DIP Agent gave notice of its resignation, the retiring DIP Agent's resignation

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shall nevertheless thereupon become effective in accordance with such notice and (a) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the DIP Agent on behalf of the Lenders or any Issuing Bank under any of the Loan Documents, the retiring DIP Agent shall continue to hold such collateral security until such time as a successor DIP Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the DIP Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time as the Required Lenders appoint a successor DIP Agent as provided for above in this Section 11.06. Upon the acceptance of a successor's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring DIP Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring DIP Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring DIP Agent was acting as DIP Agent.

Section 11.08 Non-Reliance on DIP Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the DIP Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents, or any other document referred to or provided for herein or to inspect the Properties or books of the Loan Parties or the Subsidiaries. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the DIP Agent hereunder, the DIP Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of the Loan Parties (or any of their Affiliates) which may come into possession of the DIP Agent or any of its Affiliates. Each other party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.09 [Reserved.]

Section 11.10 Authority of DIP Agent to Release Collateral and Liens. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to release (a) any Collateral that is permitted to be sold or released pursuant to the terms of the Loan

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Documents, and (b) any Mortgaged Property that does not constitute Material Real Property if any Building (as defined in the applicable Flood Insurance Law) or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Law) is situated on such Mortgaged Property and the DIP Agent, in its sole discretion, determines that the costs, financial and otherwise, of obtaining or maintaining a Lien or complying with all Governmental Requirements with respect to such Lien outweigh the benefit to the Secured Parties of the security afforded thereby. Each Lender and each Issuing Bank hereby authorizes, and each other Person accepting the benefit of the Liens created by the Security Instruments shall be deemed to have authorized, the DIP Agent to execute and deliver to the Borrower (or file, if appropriate), at the Borrower's sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with any sale or other disposition of Property to the extent such sale or other disposition is permitted by the terms of Section 9.11 or is otherwise authorized by the terms of the Loan Documents. To the extent any Property is sold, assigned, conveyed or otherwise transferred as expressly permitted by Section 9.11 to any Person other than a Loan Party, such Collateral shall be sold, assigned, conveyed or otherwise transferred free and clear of all Liens created by the Loan Documents.

Section 11.11 Action by the DIP Agent. The DIP Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the DIP Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders or Issuing Banks, as applicable, as shall be necessary under the circumstances as provided in Section 10.02 or Section 12.02) and in all cases the DIP Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders, the Lenders or the Issuing Banks, as applicable, (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders or Issuing Banks, as applicable, against any and all liability and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by the DIP Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then the DIP Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities) described in this Section, *provided* that, unless and until the DIP Agent shall have received such directions, the DIP Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interests of the Lenders. In no event, however, shall the DIP Agent be required to take any action which exposes the DIP Agent to personal liability or which is contrary to this Agreement, the Loan Documents or applicable law.

Section 11.12 Certain Secured Parties. No Bank Products Provider that obtains the benefit of Section 10.02(c) or any Collateral by virtue of the provisions hereof or any Security Instrument or DIP Order 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, any DIP Order or of any

Security Instrument) 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 XI to the contrary, the DIP Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products except to the extent expressly provided herein and unless the DIP Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the DIP Agent may request, from the applicable Bank Products Provider. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations consisting of Bank Products in the case of a Maturity Date.

ARTICLE XII MISCELLANEOUS

Section 12.01 Notices.

(a) Notices Generally. Subject to Section 12.01(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to the Borrower, to it at the following:

Southcross Energy Partners, L.P.
1717 Main Street, Suite 5300
Dallas, TX 75201
Attn: Michael B. Howe
Fax: (214) 979-3710
Email: michael.howe@southcrossenergy.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Ave
New York, NY 10017
Attn: Jinsoo H. Kim
Fax: (212) 701-5217
Email: jinsoo.kim@davispolk.com

(ii) if to the DIP Agent, to it at the following:

Wilmington Trust, National Association.
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Nikki Kroll
Fax: (612) 217-5651
Email: nkroll@wilmingtontrust.com

with copies to (which shall not constitute notice):

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Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 1001909710
Attn: Alan Glantz
Fax: (212) 836-6763
Email: alan.glantz@arnoldporter.com

and

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attn: Leonard Klingbaum
Fax: (212) 728-9290
Email: LKlingbaum@willkie.com

(iii) if to Wells Fargo, as Issuing Bank, to it at the following:

[]

(iv) if to RBC, as Issuing Bank, to it at the following:

[]

(v) if to UBS AG, as Issuing Bank, to it at the following:

[]

(vi) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.01(b) below, shall be effective as provided in Section 12.01(b).

(b) Electronic Communications.

(i) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the DIP Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II, Article III, Article IV and Article V if such Lender or such Issuing Bank, as applicable, has notified the DIP Agent that it is incapable of receiving notices under such Article(s) by electronic communication. The DIP Agent or the Borrower may, in its discretion,

agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the DIP Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (B) of notification that such notice or communication is available and identifying the website address therefore.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the DIP Agent, any Issuing Bank or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the DIP Agent, any Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the DIP Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and acknowledged by the DIP Agent, or by the Borrower and the DIP Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan

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or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Secured Obligations hereunder or under any other Loan Document, without the written consent of each Lender adversely affected thereby, *provided, however*, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) [reserved], (iii) except as provided in the definition of “Scheduled Maturity Date”, postpone the scheduled date of payment or prepayment of the principal amount of any Loan (excluding mandatory prepayments), or any interest thereon, or any fees payable hereunder, or any other Secured Obligations hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date or Maturity Date without the written consent of each Lender adversely affected thereby, (iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) waive or amend Section 3.04(c), Section 6.01, Section 10.02(c) or Section 12.14 or change the definition of the terms “Domestic Subsidiary”, “Foreign Subsidiary” or “Subsidiary”, without the written consent of each Lender (other than any Defaulting Lender), (vi) release any Guarantor (except as permitted pursuant to the Guaranty and Collateral Agreement or in connection with a sale of such Guarantor permitted under Section 9.11) or release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender), (vii) change any of the provisions of this Section 12.02(b), Section 10.02(c), or the definitions of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender other than any Defaulting Lender, (viii) change the application of prepayments under Section 3.04(c), without the written consent of the Required Lenders (it being understood that the Required Lenders may waive, in whole or in part, any prepayment so long as the application of any such prepayment that is still required to be made is not changed), or (ix) modify Section 2.07 (or any definitions related thereto) in any manner that is adverse to the Issuing Banks that have Letters of Credit outstanding without the consent of each such Issuing Bank; *provided, further*, that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the DIP Agent or any Issuing Bank hereunder or under any other Loan Document without the prior written consent of the DIP Agent or any Issuing Bank, as the case may be, and (y) the Agency Fee Letter may be amended, or rights or privileged thereunder waived in a writing executed only by the parties thereto (without the need for the consent of any other party thereto). Notwithstanding the foregoing, (x) any supplement to Schedule 7.14 (Subsidiaries) shall be effective simply by delivering to the DIP Agent a supplemental schedule clearly marked as such and, upon receipt, the DIP Agent will promptly deliver a copy thereof to the Lenders, (y) the Borrower (or other applicable Loan Party) and the DIP Agent may amend this Agreement or any other Loan Document without the consent of the Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document if the same is not objected to in writing by Lenders constituting the Required Lenders within 5 Business Days after the DIP Agent delivers written notice thereof to the Lenders, and (z) the DIP Agent and the Borrower (or other applicable Loan Party) may enter into any amendment, modification or waiver of this Agreement or any other Loan Document or enter into any agreement or instrument to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Mortgaged Property or Property to become

Mortgaged Property to secure the Secured Obligations for the benefit of the Lenders or as required by any Governmental Requirement to give effect to, protect or otherwise enhance the rights or benefits of any Lender under the Loan Documents without the consent of any Lender.

Section 12.03 Expenses, Indemnity; Damage Waiver.

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the DIP Agent and its Affiliates and by the Lenders (including the reasonable fees, charges and disbursements of counsel and other outside consultants for the DIP Agent and the Lenders) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the DIP Agent as to the rights and duties of the DIP Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), (ii) all costs, expenses, Taxes, assessments and other charges incurred by the DIP Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, counsel for the Issuing Banks, and local counsel in each material jurisdiction), and (iv) all out-of-pocket expenses incurred by the DIP Agent, any Issuing Bank or any Lender (including the fees, charges and disbursements of any counsel for the DIP Agent, any Issuing Bank or any Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.03 or in connection with the Loans made or Letters of Credit issued hereunder, including, without limitation, all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (limited, in the case of legal fees, disbursements and charges, to the reasonable and documented fees, disbursements and other charges of Arnold & Porter LLP, as counsel to the DIP Agent, Willkie Farr & Gallagher LLP, as counsel for the Lenders, as counsel for the Issuing Banks, and local counsel in each material jurisdiction). Notwithstanding anything to the contrary contained in this Section 12.03(a) or elsewhere in any of the Loan Documents, neither the Borrower nor any Subsidiary shall be obligated to pay or reimburse any Person for any costs, expenses, fees, taxes or other charges of any nature whatsoever that are incurred or payable by any Person in connection with any assignment referred to in Section 12.04(b), any participation referred to in Section 12.04(d) or any pledge or security interest referred to in Section 12.04(f).

(b) **INDEMNIFICATION BY THE BORROWER.** THE BORROWER SHALL INDEMNIFY EACH AGENT (AND ANY SUB-AGENT THEREOF), ANY ISSUING BANK AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE

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FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN “**INDEMNITEE**”) AGAINST, AND DEFEND AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, PENALTIES, LIABILITIES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE (LIMITED, IN THE CASE OF LEGAL FEES, DISBURSEMENTS AND CHARGES, TO THE REASONABLE AND DOCUMENTED FEES, DISBURSEMENTS AND OTHER CHARGES OF ARNOLD & PORTER LLP, AS COUNSEL TO THE DIP AGENT, WILLKIE FARR & GALLAGHER LLP, AS COUNSEL FOR THE LENDERS, VINSON & ELKINS LLP, AS COUNSEL FOR THE ISSUING BANKS, AND LOCAL COUNSEL IN EACH MATERIAL JURISDICTION), INCURRED BY ANY INDEMNITEE OR ASSERTED AGAINST ANY INDEMNITEE BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, (ii) THE FAILURE OF THE BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF THE BORROWER OR ANY GUARANTOR SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR LETTER OF CREDIT OR THE USE OF THE PROCEEDS THEREFROM, INCLUDING, WITHOUT LIMITATION, (A) ANY REFUSAL BY ANY ISSUING BANK TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT, OR (B) THE PAYMENT OF A DRAWING UNDER ANY LETTER OF CREDIT NOTWITHSTANDING THE NON-COMPLIANCE, NON-DELIVERY OR OTHER IMPROPER PRESENTATION OF THE DOCUMENTS PRESENTED IN CONNECTION THEREWITH, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE BORROWER AND ITS SUBSIDIARIES BY THE BORROWER AND ITS SUBSIDIARIES, (vii) ANY ASSERTION THAT THE SECURED PARTIES WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES OR OPERATIONS, INCLUDING, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF HAZARDOUS MATERIALS ON OR AT ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON-COMPLIANCE BY THE BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE BORROWER OR ANY SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY

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PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF HAZARDOUS MATERIALS ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE BORROWER OR ANY OF ITS SUBSIDIARIES, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER OR ANY OF ITS SUBSIDIARIES, OR (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY, WHETHER BROUGHT BY A THIRD PARTY OR BY THE BORROWER OR ANY SUBSIDIARY, AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES (x) ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE, (y) OTHER THAN IN THE CASE OF THE DIP AGENT AND ITS RELATED PARTIES, RESULT FROM A CLAIM BROUGHT BY THE BORROWER OR ANY SUBSIDIARY AGAINST ANY INDEMNITEE FOR BREACH IN BAD FAITH OF SUCH INDEMNITEE'S OBLIGATIONS HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, IF THE BORROWER OR SUCH SUBSIDIARY HAS OBTAINED A FINAL AND NONAPPEALABLE JUDGMENT IN ITS FAVOR ON SUCH CLAIM AS DETERMINED BY A COURT OF COMPETENT JURISDICTION OR (z) RESULT FROM ANY DISPUTE SOLELY AMONG INDEMNITEES, OTHER THAN ANY CLAIMS AGAINST ANY INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN AGENT, OR ANY SIMILAR ROLE UNDER THIS AGREEMENT, AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION ON THE PART OF THE BORROWER OR ANY OF ITS SUBSIDIARIES OR AFFILIATES.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay indefeasibly any amount required under Sections 12.03(a) or (b) to be paid by it to the DIP Agent (or any sub-agent thereof), any Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), such Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought (or, if such indemnity or reimbursement is sought after the date upon which the Loans

shall have been paid in full and the Commitments have been terminated, in accordance with such Lenders' Applicable Share as in effect immediately prior to such date))) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the DIP Agent (or any such sub-agent) or such Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the DIP Agent (or any such sub-agent) or such Issuing Bank in connection with such capacity. Each Lender hereby authorizes the DIP Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the DIP Agent to the Lender from any source against any amount due to the DIP Agent under this paragraph (c).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof (other than to the extent any such damages are asserted pursuant to a third-party claim that would otherwise be required to be indemnified or reimbursed pursuant to any Loan Document). No Indemnitee referred to in Section 12.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the Transactions.

(e) Payments. All amounts due under this Section 12.03 shall be payable promptly after written demand therefor.

Section 12.04 Assignments and Participations.

(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 (including any Affiliate of any Issuing Bank that issues a Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the DIP Agent and each Lender, and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (A) to an assignee in accordance with the provisions of Section 12.04(b), (B) by way of participation in accordance with the provisions of Section 12.04(d), or (C) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.04(f) (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 (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 12.04(d)) and, to the extent expressly contemplated hereby, the Related Parties of each of the DIP Agent, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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(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 assignments 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, no minimum amount need be assigned; and

(B) in any case not described in Section 12.04(b)(i)(A), 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 DIP Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the DIP Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement and 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 on a non- *pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 12.04(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the DIP Agent within five (5) Business Days after having received notice thereof; and

(B) the consent of the DIP Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Commitment or Credit Exposure if such assignment is to a

Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the DIP Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which may be waived or reduced in the sole discretion of the DIP Agent), and the assignee, if it is not a Lender, shall deliver to the DIP Agent an Administrative Questionnaire and any tax forms required under Section 5.03.

(v) No Assignment to Borrower. No such assignment shall be made to the Borrower, any Sponsor, or any of the Borrower's or any Sponsor's Affiliates or Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) No Assignments to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender.

Subject to acceptance and recording thereof by the DIP Agent pursuant to Section 12.04(c), 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 Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(d).

(c) Register. The DIP Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Upon the DIP Agent's receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the DIP Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 12.04(c). The entries in the Register shall be conclusive, and the Borrower, the DIP Agent, any

Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to the Borrower, the DIP Agent or any Issuing Bank, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the DIP Agent, any Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01, Section 5.02 and Section 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* that such Participant agrees to be subject to Section 4.01(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent

manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the DIP Agent (in its capacity as DIP Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.01 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.03 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.03(f) as though it were a Lender

(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, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and Section 12.04(e) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Restrictions if Registration Required. Notwithstanding any other provisions of this Section 12.04, no transfer or assignment of the interests or obligations of any Lender or any grant of participations therein shall be permitted if such transfer, assignment or grant would require the Borrower and the Guarantors to file a registration statement with the SEC or to qualify the Loans under the "Blue Sky" laws of any state.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the DIP Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the DIP Agent's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrower shall take such action as may be reasonably requested by the DIP Agent or the Lenders to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the DIP Agent constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(c) Effectiveness. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the DIP Agent and when the DIP Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(d) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof;

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and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (of whatsoever kind, including, without limitations obligations under Hedging Agreements, and in whatever currency) at any time owing by such Lender, such Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower or any Subsidiary against any and all of the obligations of the Borrower or any Subsidiary now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Subsidiary may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 12.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the DIP Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND, EXCEPT AS OTHERWISE SET FORTH THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS SHALL, EXCEPT AS OTHERWISE SET FORTH THEREIN, BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE COUNTY AND STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR

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PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER OF A NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO OTHER PARTY HERETO NOR ANY REPRESENTATIVE, AGENT OR ATTORNEY FOR ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the DIP Agent, any Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors (including accountants and legal counsel) and other 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), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or

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any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Agreement relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to any other party to this Agreement, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the DIP Agent, any Issuing Bank, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section 12.11, “**Information**” means all information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary relating to any Sponsor, Southcross Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the DIP Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by any Sponsor, Southcross Holdings, the Borrower or a Subsidiary; *provided* that, in the case of information received from any Sponsor, Southcross Holdings, the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the Transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of Texas or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Secured Obligations, it is agreed as follows: (a) the aggregate of all consideration which constitutes interest under law applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower); and (b) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Secured Obligations (or, to the extent that the principal amount of the Secured Obligations shall have been or would thereby be paid in full, refunded by such Lender to the Borrower). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law

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applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans until Payment in Full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12. To the extent that Chapter 303 of the Texas Finance Code is relevant for the purpose of determining the Highest Lawful Rate applicable to a Lender, such Lender elects to determine the applicable rate ceiling under such Chapter by the weekly ceiling from time to time in effect. Chapter 346 of the Texas Finance Code does not apply to the Borrower's obligations hereunder.

Section 12.13 Exculpation Provisions. EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND HAS RECEIVED THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS."

Section 12.14 [Reserved].

Section 12.15 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans and each Issuing Bank to issue, amend, renew or extend Letters of Credit hereunder are solely for the benefit of the Borrower, and no other Person (including, without limitation, any Subsidiary of the Borrower, any obligor, contractor, subcontractor, supplier or materialman) shall have any rights, claims, remedies or

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privileges hereunder or under any other Loan Document against the DIP Agent, any Issuing Bank or any Lender for any reason whatsoever. There are no third party beneficiaries.

Section 12.16 USA Patriot Act Notice. The DIP Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**USA Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of the Borrower and its Subsidiaries and other information that will allow the DIP Agent and such Lender to identify the Borrower and its Subsidiaries in accordance with the USA Patriot Act.

Section 12.17 [Reserved].

Section 12.18 Non-Recourse to the General Partner. This Agreement and the other Loan Documents do not and will not in any way constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary hereunder or thereunder. If any provision of this Agreement or any other Loan Document is held by any authority to constitute a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary, such provision shall be deemed ineffective to the extent such provision constitutes a direct or indirect guaranty by the General Partner of the obligations of the Borrower or any Subsidiary. Neither this Agreement nor any Loan Document is intended to create any liability of the General Partner for the performance of any obligation of the Borrower or any Subsidiary thereunder or hereunder. NEITHER THE DIP AGENT NOR ANY LENDER SHALL HAVE ANY RECOURSE AGAINST THE GENERAL PARTNER (INCLUDING ANY RECOURSE FOR ANY DEFICIENCY REMAINING UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT AFTER THE DISPOSITION OF COLLATERAL PLEDGED BY THE BORROWER OR ANY SUBSIDIARY AND THE DISPOSITION OF THE GP COLLATERAL PLEDGED BY THE GENERAL PARTNER); *PROVIDED*, THAT, NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN NO EVENT SHALL THIS SECTION 12.18 RELIEVE THE GENERAL PARTNER FROM ANY LIABILITY IT MAY HAVE AS A RESULT OF ITS FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR THAT OF ANY OF ITS OFFICERS, IN CONNECTION WITH THE EXECUTION, DELIVERY OR PERFORMANCE OF ANY LOAN DOCUMENTS OR ANY CERTIFICATES OR DOCUMENTS DELIVERED IN CONNECTION THEREWITH BY THE GENERAL PARTNER ON BEHALF OF THE BORROWER IN ITS CAPACITY AS THE BORROWER’S GENERAL PARTNER.

Section 12.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the DIP Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the DIP Agent or any Lender has advised or is advising the Borrower or any Subsidiary on other matters; (ii) the arranging and other services regarding this Agreement provided by the DIP Agent and the Lenders are arm’s-length commercial transactions between the Borrower and its Subsidiaries, on the one hand, and the

DIP Agent and the Lenders, on the other hand; (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the DIP Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Subsidiaries, or any other Person; (ii) neither the DIP Agent or the Lenders has any obligation to the Borrower or any of its Subsidiaries with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the DIP Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Subsidiaries, and neither the DIP Agent nor any of the Lenders has any obligation to disclose any of such interests to the Borrower or its Subsidiaries. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the DIP Agent and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.20 [Reserved].

Section 12.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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[SIGNATURES BEGIN NEXT PAGE]

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The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

**SOUTHCROSS ENERGY PARTNERS,
L.P.**

By: Southcross Energy Partners GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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Each of the undersigned (i) consents and agrees to this Agreement, and (ii) agrees that the Loan Documents to which it is a party (including, without limitation, the Debtor-in-Possession Guaranty and Collateral Agreement dated as of [●], as applicable) shall remain in full force and effect and shall continue to be the legal, valid and binding obligation of the undersigned, enforceable against it in accordance with its terms.

CONSENTED, ACKNOWLEDGED AND
AGREED TO BY:

**SOUTHCROSS ENERGY OPERATING, LLC
SOUTHCROSS ENERGY LP LLC
SOUTHCROSS ENERGY GP LLC
SOUTHCROSS DELTA PIPELINE LLC
SOUTHCROSS PROCESSING LLC
SOUTHCROSS ALABAMA PIPELINE LLC
SOUTHCROSS NUECES PIPELINES LLC
SOUTHCROSS ENERGY FINANCE CORP.
FL RICH GAS SERVICES GP, LLC
T2 EF COGENERATION HOLDINGS, LLC
T2 EF COGENERATION LLC**

By: _____
Name:
Title

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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**SOUTHCROSS CCNG GATHERING LTD.
SOUTHCROSS CCNG TRANSMISSION LTD.
SOUTHCROSS GULF COAST
TRANSMISSION LTD.
SOUTHCROSS MISSISSIPPI PIPELINE, L.P.
SOUTHCROSS MISSISSIPPI GATHERING,
L.P.
SOUTHCROSS ALABAMA GATHERING
SYSTEM, L.P.
SOUTHCROSS MIDSTREAM SERVICES, L.P.
SOUTHCROSS MARKETING COMPANY
LTD.
SOUTHCROSS NGL PIPELINE LTD.
SOUTHCROSS GATHERING LTD.
SOUTHCROSS MISSISSIPPI INDUSTRIAL
GAS SALES, L.P.**

By: Southcross Energy GP LLC,
as general partner

By: _____
Name:
Title:

FL RICH GAS SERVICES, LP

By: FL Rich Gas Services GP, LLC,
its general partner

By: _____
Name:
Title:

[Signature Page]

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FL RICH GAS UTILITY GP, LLC

By: _____
Name:
Title:

**FL RICH GAS UTILITY, LP
SOUTHCROSS TRANSMISSION, LP**

By: FL Rich Gas Utility GP, LLC, its general
partner

By: _____
Name:
Title:

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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DIP AGENT:

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as the DIP Agent

By: _____
Name: _____
Title: _____

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SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ISSUING BANK:

[●], as an Issuing Bank

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

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SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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LENDER:

[●], as a Lender

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[Signature Page]

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ANNEX I
LIST OF COMMITMENTS

| Name of Lender | DIP LC Commitment | Initial Term Commitment | Delayed Draw Term Commitment | Commitment |
|-----------------------|------------------------------|------------------------------------|---------------------------------------------|-------------------------|
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| | | | | |
| | | | | |
| | | | | |
| TOTAL | \$55,000,000.00 | \$30,000,000.00 | \$42,500,000.00 | \$127,500,000.00 |

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

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ANNEX II
PREPETITION LETTERS OF CREDIT

| <u>Issuing Bank</u> | <u>Beneficiary</u> | <u>Applica nt</u> | <u>Amount</u> | <u>Issue Date</u> |
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|
|----------------------------|---------------------------|------------------------------|----------------------|--------------------------|

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

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ANNEX III
PERMITTED VARIANCES

| Forecast Line Item | Testing Period | Permitted Variance |
|---------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Total Cash Receipts | First two-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash receipts not less than 80% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash receipts not less than 85% of those shown on the Approved Budget for the applicable period |
| Total Cash Expenditures | First two-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | First three-week period following the Petition Date | Total cash expenditures not to exceed 120% of those shown on the Approved Budget for the applicable period |
| | From the fourth week and thereafter, the rolling four-week period | Total cash expenditures not to exceed 115% of those shown on the Approved Budget for the applicable period |

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ANNEX IV
INITIAL APPROVED BUDGET

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AGREEMENT
SOUTHCROSS ENERGY PARTNERS, L.P.

#91891295v12

SCHEDULE 8.20

Post-Closing Obligations

1. Insurance Endorsements. Within thirty (30) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall deliver to DIP Agent insurance certificates and endorsements for liability and property, that provide Wilmington Trust, National Association, and its successors and assigns, ATIMA, as DIP Agent for the Lenders, is additional insured or lender's loss payable, as applicable, in form and substance reasonably satisfactory to the DIP Representative and otherwise in compliance with Section 8.07 of the Credit Agreement.
2. Possessory Collateral. Within five (5) days of the Effective Date (or such later date as determined by DIP Agent in its reasonable discretion), the Loan Parties shall have delivered (a) any Pledged Securities, Instruments or Tangible Chattel Paper (as such terms are defined in the Guaranty and Collateral Agreement) existing as of the Effective Date and not otherwise delivered on the Effective Date and (b) any other Collateral existing as of the Effective Date that would have required to be delivered by the Guaranty and Collateral Agreement if such Collateral was acquired after the Effective Date and such Collateral is not otherwise delivered on the Effective Date.
3. Account Control Agreements. Within sixty (60) days of the Effective Date (or such later date as determined by Lender Representative in its reasonable discretion), the Loan Parties shall have entered into control agreements required by Section 9.23 of the Credit Agreement, in form and substance satisfactory to the DIP Agent.