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

In re: PLENTY UNLIMITED TEXAS LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 25-90105 (CML) (Joint Administration Requested) (Emergency Hearing Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING AND (VI) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 3:00 p.m. (prevailing Central Time) on March 24, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on March 24, 2025 at 3:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk, Houston, TX 77002.

Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's home page. The meeting code is "JudgeLopez." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Lopez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

[1] The Debtors in these chapter 11 cases, together with the last four digits of each of the Debtors' federal tax identification numbers, are: Plenty Unlimited Texas LLC (3500); Plenty Unlimited Inc. (0916); MJNN LLC (N/A); White Farms LLC (N/A); Blue Gardens LLC (8487); Bright Agrotech, Inc. (4106); and P F2 VA LLC (9633). The Debtors' service address is 1461 Commerce Drive, Laramie, WY 82070.

Plenty Unlimited Texas LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors" or "Plenty") hereby submit this motion (the "Motion"). In support of this Motion, the Debtors submit the (i) *Declaration of Daniel Malech in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Malech Declaration"), (ii) *Declaration of Colin Adams in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Adams Declaration"), and (iii) *Declaration of Richard W. Morgner in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (II) Granting Adequate Protection and (III) Scheduling Final Hearing and (2) Debtors' Emergency Motion for Entry of an Order (I)(A) Approving Bid Procedures and Authorizing Sale Transaction; (B) Approving the Selection of Stalking Horse Bidder and the Debtors' Entry into the Stalking Horse Agreement; (C) Scheduling Auction and Sale Hearing; (D) Approving Sale Notices; (E) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief* (the "Morgner Declaration," together with the Malech Declaration and the Adams Declaration, the "First Day Declarations"), filed contemporaneously herewith and incorporated herein by reference.[2] In further support of this Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The Debtors are an innovative Agricultural Technology (AgTech) company with a platform focused on indoor vertical farming. As noted in the Malech Declaration, as a startup driving new technologies, Plenty has faced unfavorable market conditions and restrictions in access to incremental funding, which have in turn driven challenges to their capital-intensive operations and build-out. Prior to the Petition Date, the Debtors, including with the assistance of

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[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declarations.

Jefferies, undertook a robust process to evaluate any and all potential pathways to capital infusions, including direct equity investment, debt or structured equity financing, strategic partnerships or combinations, or a sale of assets, among other potential transactions.

2. By January 2025, this robust capital raising process had not resulted in any actionable proposals and the Debtors faced the imminent possibility of a cessation of operations. Morgner Decl. ¶ 15. Accordingly, the Debtors, again through Jefferies, sought financing from stakeholders who were already familiar with the Debtors' business and capital structure and who could move quickly towards definitive documentation while continuing to pursue discussions with third parties. *Id*. Later that month, the Company received an indication of interest from the Plan Sponsors with respect to an in-court restructuring process. *Id*. The Debtors ultimately did not receive any competing bridge financing offers. Morgner Decl. ¶ 16.

3. Following extensive negotiations with the Prepetition Secured Parties (as defined below), on or about February 21, 2025, Plenty Unlimited Inc. and certain of its subsidiaries entered the Prepetition Loan Facility (as defined below) with the Prepetition Secured Parties (as defined below). Morgner Decl.¶¶ 16-17. The Debtors' obligations arising under, or in connection with, the Prepetition Loan Facility are secured by substantially all assets of the following entities in favor of the Prepetition Secured Parties. Morgner Decl. ¶ 17. The Prepetition Loan Facility was further amended and restated to provide for additional delayed draw commitments in the aggregate amounts of $6.275 million. *Id*. The outstanding principal amount under the Prepetition Loan Facility is approximately $8.675 million. *Id.*

4. With the temporary breathing room provided by the Prepetition Loan Facility, the Debtors were able to continue negotiations with the DIP Lenders regarding the terms and conditions of the DIP Facility the path forward for these chapter 11 cases. Morgner Decl. ¶

18. In addition, the Prepetition Loan Facility provided runway for the Debtors to continue negotiations with the Virginia Mechanics Lien Claimants. *Id*. The Debtors, after good faith and arms' length negotiations, obtained a commitment from the DIP Lenders to provide the liquidity support during these chapter 11 cases on the terms reflected in the DIP Credit Agreement, and to support (a) a fulsome recapitalization transaction, allowing for a new capital infusion to support go forward operations at their Richmond, Virginia Farm and R&D facility in Laramie, Wyoming, or (b) a "pivot" to the potential sale or disposition of some or all of the Debtors' assets or equity interests (together, the "Restructuring Transactions"). *Id*.

5. As discussed below, the proposed DIP Facility provides for an additional $20,700,000 of liquidity during the pendency of these chapter 11 cases, to be accessed through additional delayed draws. Following entry of the Interim Order, the Debtors will have access to (a) an initial $12 million and (b) upon entry of the Final Order, the Debtors shall have access to an additional draw of $8.7, subject to the terms set forth in the DIP Credit Agreement.

6. Absent entry into the DIP Facility, the Debtors would not have sufficient liquidity to continue operating in the ordinary course and would be forced to shut down operations, which would be value destructive, particularly in light of the nature of the Debtors' goods and inventory. Adams Decl. ¶¶ 126-128. The Debtors have been, and remain, committed to evaluating all value-maximizing paths forward, both with respect to the DIP Facility and with respect to the terms of the Restructuring Transactions. Malech Decl. ¶ 10-12. For these reasons, the Debtors respectfully request that the Court grant this Motion.

RELIEF REQUESTED

7. The Debtors seek entry of an interim order, substantially in the form of the proposed interim order filed with this Motion (the "Interim Order"), and a final order (the "Final Order," and, together with the Interim Order, the "DIP Orders"):[3]

a) authorizing Plenty Unlimited Inc. and Plenty Unlimited Texas LLC (the "Borrowers") to obtain postpetition financing ("DIP Financing") pursuant to a superpriority, senior secured and priming debtor-in-possession term loan credit facility (the "DIP Facility") subject to the terms and conditions set forth in that certain Superpriority Senior Secured Debtor-in-Possession Loan Agreement attached to the Interim Order as **Exhibit 1** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement"), by and among the Borrowers, the DIP guarantors (collectively, the "DIP Guarantors"), the lenders from time to time party thereto (collectively the "DIP Lenders") and GLAS USA LLC, as Administrative Agent and Collateral Agent (in its respective capacities, the "DIP Agent" and, collectively, with the DIP Lenders, the "DIP Secured Parties"), in an aggregate principal amount not to exceed $20.7 million (the commitments in respect thereof, the "DIP Commitments") of new money superpriority senior secured term loans in the aggregate principal amount of $20.7 million (the term loans made thereunder, the "DIP Term Loans"), of which $12 million will be immediately available upon entry of the Interim Order in accordance with the terms and conditions set forth in the DIP Credit Agreement and $8.7 million will be available as a delayed draw term loan, subject to the terms set forth in the DIP Credit Agreement;

b) authorizing the Debtors to execute, deliver and perform under the DIP Credit Agreement and all other loan documentation related to the DIP Facility, including, without limitation, as applicable, security agreements, pledge agreements, control agreements, mortgages, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, and such other documents that may be reasonably requested by the DIP Agent and the DIP Lenders in connection with the DIP Facility, in each case, as amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, together with the DIP Credit Agreement and any other Credit Documents (as defined in the DIP Credit Agreement), and the Interim Order, the "DIP Documents");

c) authorizing the Debtors to incur and jointly and severally, as applicable, guarantee loans, advances, extensions of credit, financial accommodations, reimbursement

[3] To the extent of any conflict between the descriptions and definitions in this Motion and the DIP Orders, DIP Credit Agreement, or DIP Loan Documents, then the DIP Orders, DIP Credit Agreement, or DIP Loan Documents, as applicable, will control.

obligations, fees and premiums (including, without limitation, commitment fees, backstop premiums, administrative agency fees, collateral agency or security trustee fees and any other fees or premiums payable pursuant to the DIP Documents) costs, expenses and other liabilities, and all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other obligations due or payable under the DIP Documents (collectively, the "DIP Obligations"), and to perform such other and further acts as may be required, necessary, desirable or appropriate in connection therewith;

d) subject to the Carve-Out (as defined below), granting to the DIP Agent, for the benefit of itself and the DIP Secured Parties, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations of the Debtors;

e) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof, including, without limitation, all Cash Collateral (as defined below), on the terms described in the Interim Order, and, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds (as defined in the Interim Order), in each case subject to the Carve-Out;

f) authorizing the Debtors, the DIP Agent, acting at the direction of the Required Lenders (as defined in the DIP Credit Agreement), and the Prepetition Agent and the other respective Prepetition Secured Parties (each as defined below), to take all commercially reasonable actions to implement and effectuate the terms of the Interim Order;

g) waiving (a) all rights to surcharge the Prepetition Collateral (as defined herein) and the DIP Collateral (as defined herein) (together, the "Collateral") pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order;

h) waiving the equitable doctrine of "marshaling" and other similar doctrines (i) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (ii) with respect to any of the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties) (as defined herein); provided that the foregoing waiver shall be without prejudice to any provisions of the Final Order;

i) authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined herein) solely in accordance with the DIP Orders and the DIP Documents;

j) authorizing the Debtors to pay the DIP Obligations as such become earned, due and payable to the extent provided in, and in accordance with, the Interim Order and the DIP Documents;

k) subject to the restrictions set forth in the DIP Documents and the Interim Order, authorizing the Debtors to use the Prepetition Collateral (as defined in the Interim Order), including Cash Collateral (as defined herein) of the Prepetition Secured Parties under the Prepetition Senior Secured Note Documents (as defined herein), and provide adequate protection as and to the extent set forth in the Interim Order, to the Prepetition Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution in value resulting from the imposition of the automatic stay under section 362 of the Bankruptcy Code (the "Automatic Stay"), the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral), and the priming of their respective interests in the Prepetition Collateral (including Cash Collateral);

l) vacating or modifying the Automatic Stay to the extent set forth in the Interim Order and to the extent necessary to permit the Debtors and their affiliates, the DIP Secured Parties and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order, the DIP Documents and, upon entry, the Final Order and to deliver any notices of termination described therein;

m) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of the Interim Order and, upon entry, the Final Order; and

n) scheduling a final hearing (the "Final Hearing") to consider final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order"), as set forth in the DIP Motion and the DIP Documents filed with this Court and approving the form of notice with respect to the Final Hearing.

JURISDICTION AND VENUE

8. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent to the Court's entry of a final order to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final

orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

THE DEBTORS' PREPETITION CAPITAL STRUCTURE

11. Plenty Unlimited Inc. and certain of its subsidiaries are parties to that certain Third Amended and Restated Note due March 28, 2025 (as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Senior Secured Bridge Note" and the other Credit Documents (as defined in Prepetition Senior Secured Bridge Note) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Senior Secured Note Documents") by and among (a) Plenty Unlimited Inc., as issuer (the "Prepetition Senior Secured Bridge Note Issuer"), (a) each of the debtor guarantors from time to time party thereto (collectively, the "Prepetition Senior Secured Bridge Note Guarantors" and, together with the Prepetition Senior Secured Bridge Note Issuer, the "Prepetition Senior Secured Bridge Note Parties"), (c) the Holders (as defined in the Prepetition Senior Secured Bridge Note) from time to time party thereto (collectively, in their capacities as such, the "Prepetition Senior Secured Bridge Note Holders"), and (d) One Madison Group, Plenty II, LLC, as collateral agent (in such capacity, the "Prepetition Agent" and, collectively, with the Prepetition Senior Secured

Bridge Note Holders, the "Prepetition Secured Parties"), the Prepetition Secured Parties have extended the Prepetition Senior Secured Bridge Note, for the benefit of the Prepetition Secured Parties.

12. The original principal amount of the Prepetition Senior Secured Bridge Note was $2.4 million (as increased, the "Prepetition Loan Facility"). The Prepetition Loan Facility was further amended and restated to provide for additional delayed draw commitments. The Debtors' obligations arising under, or in connection with, the Prepetition Senior Secured Bridge Note are secured by the Prepetition Liens in the Prepetition Collateral. As of the date hereof (the "Petition Date"), the outstanding principal amount under the Prepetition Loan Facility is approximately $8.675 million.

SUMMARY OF TERMS OF DIP FACILITY AND USE OF CASH COLLATERAL

13. In accordance with Bankruptcy Rules 4001(b)-(d), as incorporated by Local Rule 1075, the chart below summarizes material terms of the Interim Order and the DIP Credit Agreement.

MATERIAL TERMS		Location
Borrower Bankruptcy Rule 4001(c)(1)(B)	Borrowers. Plenty Unlimited Inc. and Plenty Unlimited Texas LLC Guarantors. All the Debtors in these chapter 11 cases. DIP Lenders. One Madison Group – Plenty, LLC and SVF II Pacific (DE) LLC	DIP Credit Agreement Preamble and Recitals
DIP Facility and Borrowing Limits Bankruptcy Rule 4001(c)(1)(B)	The DIP Facility, in a total amount of $20.7 million, shall be made available in two draws on the terms set forth in the DIP Orders and in the DIP Credit Agreement, of which (a) an initial amount of $12 million of new money will be available to the Debtors immediately upon entry of the Interim	Interim Order preamble; DIP Credit Agreement, Recitals and § 2.01.

MATERIAL TERMS		Location
	Order (the "Initial Term Loan") and (b) $8.7 million will be available as a delayed draw term loan, subject to the terms set forth in the DIP Credit Agreement (the "Delayed Draw Term Loan"), in each case accordance with the DIP Credit Agreement.	
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	Interest Rate: 12.0% per annum payable in kind Default Rate: 14.0% per annum payable in kind	DIP Credit Agreement § 2.02
Maturity Date; Duration for Use of DIP Collateral Bankruptcy Rule 4001(c)(1)(B)	"Maturity Date" means the earlier to occur of (a) the Scheduled Maturity Date; (b) the effective date of any Chapter 11 Plan; (c) the date of acceleration or termination of the DIP Facility in accordance with the terms thereof; and (d) the date of consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code (including, without limitation, consummation of the 363 Sale). "Scheduled Maturity Date" means June 23, 2025, provided that if such date is not a Business Day, the Scheduled Maturity Date shall be the immediately preceding Business Day.	DIP Credit Agreement Definitions; § 9.15
Events of Default Bankruptcy Rule 4001(c)(1)(B)	Usual and customary events of defaults for facilities of this type and purpose, including, among others: • breach of the budget covenant, • failure to comply with milestones, • nonpayment of obligations, • covenant defaults, • breaches of representations and warranties, and the occurrence of certain adverse actions or consequences in the chapter 11 cases.	DIP Credit Agreement § 7.01
Liens and Priority Granted for New Credit Bankruptcy Rule 4001(c)(1)(B)(i)	As security for the DIP Obligations, effective and automatically and properly perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the Debtors or any of the DIP Secured Parties of mortgages, security agreements, control agreements, pledge	Interim Order, ¶ 6; DIP Credit Agreement § 5.25

MATERIAL TERMS		Location
	agreements, financing statements, intellectual property filings or other similar documents, notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates, or the possession or control by the DIP Agent of, or over, any Collateral, without any further action by the DIP Agent or the DIP Secured Parties, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security interests and liens granted to the DIP Agent, for its benefit and for the benefit of the DIP Secured Parties, pursuant to the Interim Order and the DIP Documents, the "DIP Liens") granted to the DIP Agent for its own benefit and the benefit of the DIP Secured Parties (all property identified in clauses (a) through (c) below being collectively referred to as the "DIP Collateral"). (a) *Liens 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, intangible, real, personal or mixed prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code (each, to the extent in compliance as subject to any bar date order entered by this Court), including, without limitation, any and all unencumbered cash of the Debtors and any investment of 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, goodwill, causes of action, insurance policies and rights, claims and proceeds from insurance,	

MATERIAL TERMS		Location
	commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper (including electronic chattel paper and tangible chattel paper), interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, equity interests of subsidiaries, joint ventures and other entities, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise (the "Unencumbered Property"), in each case other than the Avoidance Actions (but, for the avoidance of doubt, subject to entry of the Final Order, "Unencumbered Property" shall include Avoidance Proceeds). (b) *Liens Priming Prepetition Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors subject to the Prepetition Liens, regardless of where located, regardless whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected (the "Priming Liens"), which Priming Liens shall be senior in all respects to the interests of the Prepetition Secured Parties arising from the current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted to the Prepetition Secured Parties) (the "Primed Liens"). (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 tangible and intangible prepetition and postpetition property of the Debtors that is subject to (i) valid, perfected and non-avoidable senior liens in existence immediately prior to the Petition Date (that are senior to the Primed Liens) or (ii) valid and	

MATERIAL TERMS		Location
	non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date, solely to the extent permitted by section 546(b) of the Bankruptcy Code (each, to the extent in compliance as subject to any bar date order entered by this Court), which shall be (x) immediately junior and subordinate to any such valid, perfected and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date, and (y) any such valid and non-avoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date solely as permitted by section 546(b) of the Bankruptcy Code; *provided* that nothing in the foregoing clauses (i) and (ii) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and (d) *Liens Senior to Certain Other Liens.* The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in the 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 Debtors, or (C) any intercompany or affiliate liens of the Debtors or security interests of the Debtors; 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 of the Interim Order.	
Superpriority Expense Claims for New Credit	Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims	Interim Order ¶ 5

MATERIAL TERMS		Location
Bankruptcy Rule 4001(c)(1)(B)(i)	against the Debtors on a joint and several basis (without the need to file any proof of claim) with now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, including any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 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") and, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, shall 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 postpetition property of the Debtors and all proceeds thereof (excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions") but, subject to the entry of the Final Order, including any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds")) in accordance with the DIP Documents, the Interim Order or the Final Order, subject and subordinate only to 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 the Interim Order or any provision hereof is vacated, reversed or modified, on appeal.	
Parties with an Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	Prepetition Secured Parties.	Interim Order ¶ 12

MATERIAL TERMS		Location
Duration/Use of Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(iii)	Notwithstanding any other provision of the Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor party (a) in connection with the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in their respective capacity as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Obligations and/or the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Obligations and/or the liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the Interim Order, the Final Order, the DIP Documents or the Prepetition Senior Secured Note Documents in respect of the Prepetition Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and/or DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate (but not to prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured	Interim Order ¶ 19; DIP Credit Agreement § 4.08

MATERIAL TERMS		Location
	Parties up to an aggregate cap of no more than $50,000, (b) to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties, the DIP Agent's or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Senior Secured Note Documents or the Interim Order; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Secured Parties under the Interim Order, the Prepetition Senior Secured Note Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and 507(b) Claims granted to the Prepetition Secured Parties; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved or authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under the Interim Order or permitted under the DIP Documents (including the Approved Budget), in each case unless all DIP Obligations, Prepetition Obligations, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Secured Parties and Prepetition Secured Parties under the Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Secured Parties.	
Liens, Cash Payments or Adequate Protection Provided	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 all Prepetition	Interim Order ¶13

MATERIAL TERMS		Location
for Use of Cash Collateral Bankruptcy Rules4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	Collateral (including Cash Collateral) in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Prepetition Liens by the DIP Liens pursuant to the DIP Documents and the Interim Order, the grant of any other lien under section 364 of the Bankruptcy Code or the stay of the Prepetition Secured Parties' rights under the Prepetition Collateral, the payment of any amounts under the Carve-Out or pursuant to the Interim Order, the Final Order or any other order of the Court or provision of the Bankruptcy Code or otherwise, and the imposition of the Automatic Stay (the "Adequate Protection Claims"), In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following as Adequate Protection for, and to secure repayment of an amount equal to such Adequate Protection Claims, and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the "Adequate Protection Obligations"): (a) *Adequate Protection Liens*. The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) in the amount of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the "Adequate Protection Liens"), in each case subject and subordinate only to the DIP Liens (and any Prepetition Permitted Prior Liens) and the Carve-Out.	

MATERIAL TERMS		Location
	(i) *Section 507(b) Claims.* The Prepetition Secured Parties are hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claims, which, to the fullest extent permitted under the Bankruptcy Code, shall be junior in priority to the DIP Superpriority Claims, and the Carve-Out, but senior in 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 shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Proceeds). Except to the extent expressly set forth in the Interim Order, the Final Order or the DIP Documents, 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) have indefeasibly been paid in cash in full and all DIP Commitments have been terminated. (b) *Additional Adequate Protection.* (i) *Budget and Financial Covenants*. Upon indefeasible payment in full of all DIP Obligations and all other obligations under the DIP Facility, (i) the Approved Budget shall continue to be updated in accordance with the terms and conditions of the DIP Credit Agreement and (ii) the Prepetition Secured Parties are entitled to performance of those certain financial and other covenants set forth in Article VI of the DIP Credit Agreement.	

MATERIAL TERMS		Location
	(c) *Prepetition Secured Parties Fees and Expenses.* As further Adequate Protection, the Debtors shall provide the Prepetition Secured Parties without duplication of fees paid for the benefit of the DIP Secured Parties, cash payments of all reasonable and documented prepetition and postpetition fees and expenses, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of primary, special, conflicts and local counsel (in each applicable jurisdiction) and financial advisors to (i) One Madison Group – Plenty, LLC and its affiliates, including without limitation, Davis Polk & Wardwell LLP, Porter Hedges LLP and Moses & Singer LLP and (ii) SVF II Pacific (DE) LLC and its affiliates, including without limitation Sullivan & Cromwell LLP, Porter Hedges LLP and Moses & Singer LLP (the "Adequate Protection Fees and Expenses") (and such counsel and advisors, the "Prepetition Secured Parties Advisors"), subject to the review procedures set forth in paragraph 18 of the Interim Order. (d) *Adequate Protection Information Rights*. The Debtors shall promptly provide the Prepetition Secured Parties and the Prepetition Secured Parties Advisors (and subject to applicable confidentiality restrictions contained in any of the Prepetition Senior Secured Note Documents), with all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the DIP Secured Parties under the DIP Documents, including without limitation the reporting required under Article V of the DIP Credit Agreement. (e) *Maintenance of Collateral*. The Debtors shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Senior Secured Note Documents and the DIP Documents.	

MATERIAL TERMS		Location
Proposed Budget and Variance Report Bankruptcy Rule 4001(c)(1)(B)	Lead Borrower shall deliver (which delivery may be made by email), or shall cause to be delivered, to Administrative Agent for distribution by Administrative Agent to each Lender: (a) not later than 11:59 p.m. (New York City time) on every fourth Thursday occurring after the Petition Date (each, an "Updated Budget Delivery Date"), commencing with the Thursday following April 17, 2025 (or if any such Thursday is not a Business Day, the next Business Day thereafter), a Budget for the period commencing on the Saturday immediately preceding the applicable Updated Budget Delivery Date through and including the Budget Termination Date (each, an "Updated Budget"), in form and substance acceptable to the Required Lenders; *provided* that: (i) such Updated Budget shall be deemed acceptable to the Required Lenders if the Required Lenders have not objected (which may be provided by email to the Lead Borrower, including from the legal advisors to the Required Lenders) to such Updated Budget within five (5) Business Days after receipt by the Required Lenders of such Updated Budget; (ii) the failure of any Updated Budget to be accepted by the Required Lenders shall not be deemed to be a violation of this Section 5.21 and no Default or Event of Default shall result from any objection by the Required Lenders to any Updated Budget; and (iii) for the avoidance of doubt, upon (and subject to) the acceptance (or deemed acceptance) by the Required Lenders of any Updated Budget, such Updated Budget shall constitute an Approved Budget. (b) not later than 11:59 pm (New York City time) on each Thursday occurring after the Petition Date, commencing with the Thursday of the third full calendar week occurring after the Petition Date (or	DIP Credit Agreement Definitions, § 5.21

MATERIAL TERMS		Location
	to the extent such Thursday is not a Business Day, the next Business Day thereafter), a Budget Variance Report for the most recently ended Budget Variance Test Period; and (c) not later than 11:59 pm on every Thursday occurring after the Closing Date, commencing with the Thursday of the second full week after the Petition Date, or to the extent such Thursday is not a Business Day, the next Business Day thereafter, a certificate of a Responsible Officer on behalf of the Lead Borrower certifying the amount of Liquidity as of the Friday immediately preceding such delivery date. "Budget Variance Report" shall mean, for any Budget Variance Test Period, a weekly variance report prepared by the Lead Borrower's management, comparing for such Budget Variance Test Period the actual results against anticipated results under the Approved Budget, on a line-item basis and in the same level of detail set forth in the applicable Approved Budget, together with a written explanation for all material variances of for any given testing period; *provided* that, to the extent the applicable Budget Variance Test Period is covered by more than one Approved Budget, the applicable weeks from each applicable Approved Budget shall be utilized in calculating the comparisons for purposes of the Budget Variance Report. "Budget Variance Test Date" shall mean the Friday of every week (commencing with the Friday of the second full calendar week occurring after the Petition Date) or, to the extent such Friday is not a Business Day, the next Business Day thereafter.	
Conditions to Closing Bankruptcy Rule 4001(c)(1)(B)	Usual and customary for financings of this type.	DIP Credit Agreement § 3.01
Covenants	Usual and customary affirmative and negative covenants for financings of this type.	DIP Credit

MATERIAL TERMS		Location
Bankruptcy Rule 4001(c)(1)(B)		Agreement Arts. V, VI
Fees, Expenses and Additional Payments Bankruptcy Rule 4001(c)(1)(B)	Upfront Premium: 5.0% of the aggregate amount of each DIP Lender's Term Loan Commitments on the Closing Date, payable in kind Exit Premium: 4.0% of the aggregate amount, without duplication, of each DIP Lender's Term Loans and Term Loan Commitments as of the applicable date, payable in cash in accordance with the DIP Credit Agreement	DIP Credit Agreement §§ 2.04 (a), (b)
Prepayments Bankruptcy Rule 4001(c)(1)(B)	Voluntary Prepayments: At any time and from time to time, Borrowers may voluntarily prepay the Outstanding Amount of the Loans, in whole or in part, upon not less than three (3) Business Days' prior irrevocable written notice to Administrative Agent (or such shorter period as Administrative Agent may otherwise agree); *provided*, that any prepayment of the Loans shall be in a principal amount of not less than $500,000, or an integral multiple of $500,000 in excess thereof (or, if less, the entire Outstanding Amount of the Loans). All prepayments of the Term Loans pursuant to Section 2.03(b) of the Credit Agreement shall be applied to the Outstanding Amount of the Term Loans. Additional customary mandatory prepayment requirements.	DIP Credit Agreement § 2.03(b), (c)
Terms of Use and Purposes for Use of DIP Proceeds Bankruptcy Rule 4001(c)(1)(B) 4001(b)(1)(B)(ii)	The Borrowers shall use the proceeds of the Loans solely in accordance with and provided in the Approved Budget.	DIP Credit Agreement § 4.08; Interim Order ¶ 19
Determination Regarding Prepetition Claims Bankruptcy Rule 4001(c)(1)(B)(iii)	The Interim Order contains stipulations of fact by the Debtors, including those related to the validity and enforceability of the Prepetition Secured Parties' Prepetition Liens.	Interim Order ¶ G

MATERIAL TERMS		Location
Effect of Debtors' Stipulations on Third Parties Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)	The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases 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 with requisite standing (in each case, to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the expiration of the Challenge Period and subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained in the Interim Order) by no later than (i)(x) as to the Creditors' Committee only, 60 calendar days from the formation of the Creditors' Committee, (y) if the Chapter 11 Cases are converted to chapter 7 and a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (1) 60 calendar days after entry of the Interim Order, or (2) the date that is 30 calendar days after the appointment of such chapter 7 or chapter 11 trustee, and (z) as for all other parties in interest, 60 calendar days after entry of the Interim Order; (ii) any such later date as has been agreed to in writing by the Debtors, the DIP Agent (acting at the direction of the Required Lenders) and Prepetition Secured Parties; or (iii)	Interim Order ¶ 18

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	any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(iii), the "Challenge Period"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Obligations or the Prepetition Liens, or (B) 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, the "Challenges") 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 the 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 the Prepetition Senior Secured Note Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided*, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred, including any amended or additional claims that may or could have been asserted thereafter through an amended complaint under Fed. R. Civ. P. 15 or otherwise. 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: (1) the Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding on all parties in interest; (2)	

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	the obligations of the Debtors under the Prepetition Senior Secured Note Documents, including the Prepetition Obligations, shall constitute allowed claims not subject to defense, avoidance, reduction, setoff, claim, counterclaim, cross-claim recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, recoupment, offset, avoidance, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, claim, counterclaim, cross-claim recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, recoupment, offset, avoidance, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity; and (4) the Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any statutory or 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, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any statutory or 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, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Parties and their Representatives arising out of or relating	

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	to any of the Prepetition Senior Secured Note Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases 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 the Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or 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 Senior Secured Note Documents, the Prepetition Obligations or the Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.	
Waiver or Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Upon the occurrence and during the continuation of an Event of Default that has not been waived by the Required Lenders and following delivery of written notice (a "<u>Termination Notice</u>") (including by e-mail) on not less than five (5) business days' notice (such five (5) business day period, the "<u>DIP Agent Remedies Notice Period</u>") to lead restructuring counsel to the Debtors, lead restructuring counsel to the Prepetition Agent, lead counsel to the Creditors' Committee (if any), and the U.S. Trustee, (the "<u>Remedies Notice Parties</u>"), the DIP Agent may (at the direction of the Required Lenders) (and any automatic stay otherwise applicable to the DIP	Interim Order, ¶ 8

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	Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Agent (at the direction of the Required Lenders) to, unless the Court orders otherwise (provided that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors' Committee (if any) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Secured Parties hereby consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing or authorizing the non-consensual use of Cash Collateral, and provided, further that if a request for such hearing is made prior to the end of the DIP Agent Remedies Notice Period, then the DIP Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (a) immediately terminate and/or revoke the Debtors' right under the Interim Order and any other DIP Documents to use any Cash Collateral (subject to the Carve-Out and related provisions) and except as necessary for the Debtors' to pay employee and tax related obligations and pay expenses necessary to the survival of the Debtors' business, in accordance with the Approved Budget and the Interim Order, (b) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; and (d) invoke the right to charge interest at the default rate under the DIP Documents. Upon delivery of such Termination Notice by the DIP Agent (at the direction of the Required Lenders), without further notice to or order of the Court and subject to the Carve-Out and related provisions, the DIP Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to	

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	incur additional DIP Obligations hereunder will, subject to the expiration of the DIP Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Secured Parties will have no obligation to provide any DIP Loans or other financial accommodations. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of same on the docket. In addition, upon repayment of all DIP Obligations, without further notice to or order of the Court, the Prepetition Secured Parties' consent to use Cash Collateral hereunder will automatically terminate. (a) Following an Event of Default and the delivery of the Termination Notice, but prior to exercising the remedies set forth in this subparagraph 8(a) or any other remedies (other than those set forth in the above paragraph 8), the DIP Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "Stay Relief Motion") on not less than five (5) business days' notice to the Remedies Notice Parties (which may run concurrently with the DIP Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the DIP Secured Parties to, subject to the Carve-Out and related provisions: (a) freeze monies or balances in the Debtors' accounts; (b) immediately set-off any and all amounts in accounts maintained by the Debtors with any DIP Agent or the DIP Secured Parties against the DIP Obligations, (c) enforce any and all rights against the DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors' premises, sale or disposition of the DIP Collateral; and (d) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP Documents or applicable law. (b) If the DIP Secured Parties are permitted by order of the Court to take any enforcement action	

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	with respect to the DIP Collateral following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Secured Parties in their efforts to enforce their security interest in the DIP Collateral, and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facility to the extent drawn prior to the occurrence of Event of Default or Cash Collateral to fund operations in accordance with the Approved Budget and the terms of the DIP Documents. The Debtors shall promptly cause of copy of any Stay Relief Motion to be served on any party that has filed a request for notices with this Court. (c) No rights, protections or remedies of the DIP Agent or the other DIP Secured Parties, the Prepetition Agent or the other Prepetition Secured Parties granted by the provisions of the 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 Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.	
Waiver or Modification of Authority to File a Plan, Extend Time to File Plan, Request Use of Cash Collateral, or Request Authority to Obtain Credit Bankruptcy Rule 4001(c)(1)(B)(v)	The Interim Order does not provide for a waiver of any entity's authority or right to file a plan, request the use of cash collateral, or request authority to obtain credit, provided that there are limitations imposed on the Debtors' rights to do any of the foregoing. If any such actions are taken, it may cause an Event of Default under the DIP Facility.	

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Milestones Bankruptcy Rule 4001(c)(1)(B)(vi)	1. Petition Date: March 23, 2025 2. Petition Date + 2 calendar days: The Bankruptcy Court shall have entered the Interim Order. 3. Petition Date + 2 calendar days: The Bankruptcy Court shall have entered a Disclosure Statement Order approving an Approved Disclosure Statement on a conditional basis. 4. Petition Date + 2 calendar days: The Bankruptcy Court shall have entered the Bidding Procedures Order. 5. Petition Date + 9 calendar days: The Bankruptcy Court shall have entered an order, in form and substance acceptable to the lenders, setting a bar date in the Chapter 11 Cases. 6. Petition Date + 11 calendar days: The Loan Parties shall have commenced solicitation of an Approved Plan in accordance with the Disclosure Statement Order. 7. Earlier of (a) entry of the Final Order and (b) Petition Date + 25 calendar days: The Loan Parties shall have reached agreements with a satisfactory number of vendors and contractual counterparties with respect to resolution of outstanding obligations (as applicable) and/or disputes, which agreements and the terms thereof shall be acceptable and satisfactory, in form and substance, to the Lenders 8. Petition Date + 25 calendar days: The Bankruptcy Court shall have entered the Final Order. 9. Petition Date + 37 calendar days: The Loan Parties shall have announced a Successful Bidder (as defined in and in accordance with the Bidding Procedures). 10. Petition Date + 40 calendar days: The Loan Parties shall have filed a Plan Supplement (as defined in the Approved Plan). 11. Petition Date + 55 calendar days: Unless a Sale Toggle Notice has been delivered, the Bankruptcy Court shall have entered the Confirmation Order.	DIP Credit Agreement § 5.20

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	12. The later of (a) 14 calendar days after delivery of a Sale Toggle Notice and (b) Petition Date + 55 calendar days: If a Sale Toggle Notice has been delivered, the Bankruptcy Court shall have entered the Sale Order. 13. 5 calendar days after entry of the Confirmation Order: Unless a Sale Toggle Notice has been delivered in accordance with the Approved Plan, the Plan Effective Date (as defined in the Approved Plan) shall have occurred. 14. 5 calendar days after entry of the Sale Order: If a Sale Toggle Notice has been delivered, closing of the Approved Sale shall have occurred.	
Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien Bankruptcy Rule 4001(c)(1)(B)(vii)	The Interim Order contains customary provisions providing that entry of the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein, including the DIP Liens and the Adequate Protection Liens, without the necessity of any filings or recordings under non-bankruptcy law.	Interim Order, ¶ G(d)
Release, Waivers or Limitation on any Claim or Cause of Action Bankruptcy Rule 4001(c)(1)(B)(viii)	Effective as of the date of entry of the Interim Order, each of the Debtors and (subject to paragraph 18 of the Interim Order) the Debtors' estates, on its and their own behalf, on behalf of its and their respective past, present and future predecessors, heirs, successors, subsidiaries, and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties and the DIP Secured Parties and each of their respective Representatives (as defined herein), in their capacity as Prepetition Secured Parties, DIP Secured Parties, and Representatives of the same (collectively, the "Released Parties"), from any and all (a) obligations and liabilities to the Debtors (and their successors and assigns) and (b) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action, in each case, arising prior to the date of the Interim Order of any kind, nature or description, whether matured or unmatured, known	Interim Order, ¶ G(f)

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	or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Senior Secured Note Documents, the DIP Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order; *provided* that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party. For the avoidance of doubt, nothing in this release shall relieve the DIP Secured Parties or the Debtors of their obligations under the DIP Documents from and after the date of the Interim Order.	
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Prepetition Secured Parties and the DIP Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to	DIP Credit Agreement § 9.04; Interim Order ¶ 20

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	indemnification, the DIP Secured Parties shall be and hereby are indemnified (as applicable) as provided in the DIP Documents, as applicable, including, without limitation, Section 9.04 of the DIP Credit Agreement. The Debtors agree that no exception or defense in contract, law, or equity exists as of the date of the Interim Order to any obligation set forth, as the case may be, in paragraph 21 of the Interim Order or in the DIP Documents to indemnify and/or hold harmless the DIP Secured Parties, and any such defenses that may be in existence as of the date of the Interim Order are hereby waived.	
Section 506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x)	No costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (as defined below) 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); 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 at the direction of the Required Lenders) or the Prepetition Secured Parties, as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in the Interim Order shall be deemed to be a consent by the DIP Agent, the DIP Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment or claims against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise; *provided* further that the foregoing waiver shall be without prejudice to any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order.	Interim Order, ¶ 9
Section 552(b) Waiver Bankruptcy Rule 4001(c)(1)(B)	In no event shall the DIP Agent, the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any	Interim Order, ¶ 10

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	similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Obligations, or the Prepetition Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order.	
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi)	Subject to the entry of the Final Order, the Avoidance Proceeds (but not the Avoidance Actions) shall be subject to liens securing the DIP Obligations and Adequate Protection Claims.	Interim Order, ¶ ¶5, 6(a). 13(a)(i); DIP Credit Agreement § 5.25

STATEMENT REGARDING SIGNIFICANT PROVISIONS

14. The DIP Credit Agreement and/or Interim Order contains provisions identified in section C, paragraph 8 of the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures") as "Significant Provisions"[4] as summarized below:

DIP Facility Term	Relief Requested
Milestones Complex Case Procedures ¶ 8(a)	Each Loan Party shall achieve the milestones set forth on Schedule 5.20 of the DIP Credit Agreement unless waived or extended by the Required Lenders (it being understood that any such waiver or extension may be provided by email from the legal advisors to the Required Lenders). *See* DIP Credit Agreement § 5.20.
Cross-Collateralization Complex Case Procedures ¶ 8(b)	The DIP Credit Agreement does not authorize, and the DIP Facility does not provide for, any cross-collateralization of the Debtors' funded debt.

[4] The following summary of the terms of the DIP Facility is qualified entirely by the express terms of the referenced documents, including the DIP Credit Agreement and Interim Order. If there are any inconsistencies between the summary below and such documents, the terms of such documents shall control. Capitalized terms used but not otherwise defined in this summary chart shall have the meanings ascribed to them in the DIP Credit Agreement or the Interim Order, as applicable.

DIP Facility Term	Relief Requested
Roll-Up Loans Complex Case Procedures ¶ 8(c)	Not applicable.
Liens on Avoidance Actions or Proceeds of Avoidance Actions Complex Case Procedures ¶ 8(d)	Subject to the entry of the Final Order, the Avoidance Proceeds (but not the Avoidance Actions) shall be subject to liens securing the DIP Obligations and Adequate Protection Claims. *See* Interim Order, ¶ ¶5, 6(a), 13(a)(i); DIP Credit Agreement § 5.25.
Default Provisions and Remedies Complex Case Procedures ¶ 8(e)	The DIP Credit Agreement provides for customary events of default and remedies available to the DIP Secured Parties. *See* DIP Credit Agreement § 7.02.
Releases of Claim Against Lender or Others Complex Case Procedures ¶ 8(f)	Effective as of the date of entry of the Interim Order, each of the Debtors and (subject to paragraph 18 hereof) the Debtors' estates, on its and their own behalf, on behalf of its and their respective past, present and future predecessors, heirs, successors, subsidiaries, and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties and the DIP Secured Parties and each of their respective Representatives (as defined herein), in their capacity as Prepetition Secured Parties, DIP Secured Parties, and Representatives of the same (collectively, the "Released Parties"), from any and all (a) obligations and liabilities to the Debtors (and their successors and assigns) and (b) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action, in each case, arising prior to the date of the Interim Order of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Senior Secured Note Documents, the DIP Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order; *provided* that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party. For the avoidance of

DIP Facility Term	Relief Requested
	doubt, nothing in the release shall relieve the DIP Secured Parties or the Debtors of their obligations under the DIP Documents from and after the date of the Interim Order. *See* Interim Order, ¶ G(f).
Limitations on the Use of DIP Proceeds and Cash Collateral (Other than General "Carve-Outs") To Pay Approved Fees and Expenses of Advisors to Official Committees or Future Trustees Complex Case Procedures ¶ 8(g)	The Borrowers shall use the proceeds of the Loans solely in accordance with and provided in the Approved Budget. Notwithstanding any other provision of the Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor party (a) in connection with the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in their respective capacity as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Obligations and/or the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Obligations and/or the liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the Interim Order, the Final Order, the DIP Documents or the Prepetition Senior Secured Note Documents in respect of the Prepetition Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and/or DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate (but not to prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties up to an aggregate cap of no more than $50,000, (b) to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties, the DIP Agent's or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the

DIP Facility Term	Relief Requested
	liens, claims and rights granted to such parties under the Interim Order or Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Senior Secured Note Documents or the Interim Order; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Secured Parties under the Interim Order, the Prepetition Senior Secured Note Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and 507(b) Claims granted to the Prepetition Secured Parties; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved or authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under the Interim Order or permitted under the DIP Documents (including the Approved Budget), in each case unless all DIP Obligations, Prepetition Obligations, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Secured Parties and Prepetition Secured Parties under the Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Secured Parties. *See* Interim Order, ¶ 19.
Non-consensual Priming Liens Complex Case Procedures ¶ 8(h)	None, the liens priming the Prepetition Secured Parties' liens are consensual.
Limitation on the Ability of Estate Fiduciaries to Fulfill Their Duties Complex Case Procedures ¶ 8(i)	The DIP Facility and DIP Orders do not limit the ability of the Debtors and estate fiduciaries to fulfill their duties.

15. Inclusion of these Significant Provisions in the DIP Facility is appropriate and necessary to permit the Debtors' access to the DIP Facility. The terms and conditions of each of the Significant Provisions included in the DIP Credit Agreement are the result of arm's-length negotiations between the Debtors and the DIP Lenders. Morgner Decl. ¶¶ 18, 21-24. The DIP Lenders are unwilling to provide a DIP Facility absent the inclusion of these provisions and no other existing stakeholder or third party has presented an alternative debtor-in-possession

financing proposal. Morgner Decl. ¶ 22. Certain of the Significant Provisions, such as the liens on proceeds of Avoidance Actions, do not take effect until entry of a Final Order. Granting the relief requested pursuant to the Interim Order is critical to the continued operations of the Debtors' businesses and maintaining their going concern value. Adams Decl. ¶ 126-131.

16. The Significant Provisions of the DIP Orders are appropriate and necessary under the facts and circumstances of these chapter 11 cases and should be approved.

<u>THE DEBTORS' IMMEDIATE NEED FOR POSTPETITION FINANCING</u>

17. The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral in order to, among other things, (i) pay the fees, costs and expenses incurred in connection with these chapter 11 cases, (ii) fund any obligations benefitting from the Carve-Out, (iii) permit the orderly continuation of the operation of their businesses, (iv) maintain business relationships with vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs. Adams Decl. ¶ 128. The incurrence of new debt under the DIP Credit Agreement and use of cash collateral is necessary and vital to the preservation and maintenance of the Debtors' going concern value. *Id.* Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use cash collateral is not granted. Adams Decl. ¶ 126. The DIP Facility is the only financing option available as of the Petition Date, and, therefore the terms of the proposed financing are in the best interest of the Debtors' estates and are supported by reasonably equivalent value and fair consideration. Morgner Decl. ¶¶ 25-28.

<u>APPROVED BUDGET</u>

18. The Debtors and DIP Lenders have agreed upon an 8-week budget approved by the DIP Lenders (the "<u>Approved Budget</u>"), which is attached to the Interim Order as **<u>Exhibit 2</u>**. The budget shall not be updated less than every four weeks (each, a "<u>Proposed Budget</u>"). If such

updated budget is in form and substance satisfactory to the DIP Lenders, it shall become the "Approved Budget" for purposes of the Interim Order once approved by the DIP Lenders. *See* Interim Order, ¶ I(x); DIP Credit Agreement § 5.21.

BASIS FOR RELIEF

A. ENTERING INTO THE DIP FACILITY IS A SOUND EXERCISE OF BUSINESS JUDGMENT

19. If an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts give debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment).

20. Bankruptcy courts generally will not second-guess a debtor's business decisions when those decisions involve a minimum level of care in arriving at the decision on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the debtor. *See In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011). To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). In considering whether the terms of postpetition financings are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003).

21. The Debtors believe, in the exercise of their business judgment, that the terms of the DIP Facility taken as a whole are fair and reasonable and are the most favorable terms the Debtors could obtain under the circumstances. Adams Decl. ¶ 9; Morgner ¶¶ 21-28. Put simply,

the DIP Lenders were not willing to provide the DIP Facility on any better terms, and no other existing stakeholder or third-party has presented a comparable financing proposal. *Id.*

22. Marketing Process. For weeks leading up to the Petition Date, the Debtors conducted an extensive and robust marketing process, reaching out to approximately fifty-seven (57) potential investors to seek proposals for bridge and postpetition financing. Morgner Decl. ¶ 14. The Debtors held or scheduled seventeen (17) introductory calls and signed nondisclosure agreements with ten (10) parties and such parties were granted access to a data room. *Id.*

23. As noted above, the Debtors also recognized that, in light of the tight timeframe imposed by the liquidity constraints, the most likely source of financing would come from existing stakeholders, who are familiar with the Debtors' business and can move quickly towards definitive documentation. Morgner Decl. ¶ 15. This financing process, as noted above, was a continuation of an already extensive capital raise marketing process conducted by the Debtors' prior investment banker. *See* Malech Decl. ¶ 34-35.

24. Preservation of Going Concern Value. Given the Debtors' cash on hand, the DIP Facility is necessary for the Debtors to continue to operate and preserve their value as a going concern during these chapter 11 cases. Adams Decl. ¶ 126-131. Absent additional financing, the Debtors will not have sufficient liquidity for these chapter 11 cases and would be forced to cease operations and liquidate their assets in piecemeal fashion, likely through a chapter 7 proceeding. *Id.* Moreover, keeping their business operational allows the Debtors to maximize value to the benefit of all key stakeholders and creditors. *Id.*

25. Milestones. The DIP Credit Agreement also contains certain milestones that the Debtors must meet throughout these chapter 11 cases. The milestones were negotiated by the Debtors and the DIP Lenders as a condition to providing the DIP Facility and are the result of

extensive good faith and arm's length negotiations between the Debtors and the DIP Lenders. Morgner Decl. ¶ 26. The milestones provide the Debtors with sufficient time to seek approval of their Plan, with the option to "pivot" to a sale process while balancing the need for an expeditious exit from these chapter 11 cases. *Id.* The milestones will permit the Debtors to implement a value maximizing process. *Id.*

26. For the foregoing reasons, the Debtors believe that obtaining the DIP Facility is a sound and reasonable exercise of their business judgment and should be approved.

B. THE DEBTORS SHOULD BE AUTHORIZED TO OBTAIN DIP FACILITY ON A SECURED AND SUPERPRIORITY BASIS

27. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business and (c) obtaining credit with specialized priority or with security. *See* 11 U.S.C. § 364. If a debtor in possession cannot obtain postpetition credit on an unsecured basis, pursuant to section 364(b) of the Bankruptcy Code, a court may authorize a debtor to obtain credit or to incur debt, the repayment of which is entitled to superpriority administrative expense status, or is secured by a senior lien on unencumbered property, or a junior lien on encumbered property, or a combination of the foregoing. *See* 11 U.S.C. § 364. In addition, pursuant to section 364(d) of the Bankruptcy Code, a court may authorize a debtor to obtain postpetition credit secured by a lien that is equal or senior in priority to existing liens on encumbered property (*i.e.*, a "priming" lien) when a debtor is unable to obtain credit on other terms and the interests of existing lienholders are adequately protected, or if the existing lienholders consent to such priming.

28. The Debtors proposed to obtain financing that will "prime" the Prepetition Lenders on a consensual or uncontested basis. Therefore, the approval of the DIP Facility is governed by both sections 364(c) and 364(d) of the Bankruptcy Code.

i. The Debtors Satisfy the Condition Under Section 364(c) to Obtain Financing on a Senior Secured and Superpriority Basis

29. The Debtors propose to obtain financing under the DIP Facility, in part, by providing superpriority claims and liens pursuant to section 364(c) of the Bankruptcy Code, subject only to the Carve-Out (as defined in the Interim Order). Specifically, the Debtors propose the following:

i. valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon the Unencumbered Property, in each case other than the Avoidance Actions (but, for the avoidance of doubt, subject to entry of the Final Order, including Avoidance Proceeds); and

ii. valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors subject to the Prepetition Liens;

iii. valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors that is subject to (i) valid, perfected and non-avoidable senior liens in existence immediately prior to the Petition Date (that are senior to the Primed Liens) or (ii) valid and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date, solely to the extent permitted by section 546(b) of the Bankruptcy Code (each, to the extent in compliance as subject to any bar date order entered by this Court), which shall be (x) immediately junior and subordinate to any such valid, perfected and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date, and (y) any such valid and non-avoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date solely as permitted by section 546(b) of the Bankruptcy Code; *provided* that nothing in the foregoing clauses (i) and (ii) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder.

30. In the event that a debtor demonstrates that it is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court:

> 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 [the Bankruptcy Code]; (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.

See 11 U.S.C. § 364(c); *see also In re Crouse Grps., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

31. To satisfy the requirements of section 364(c) of the Bankruptcy Code, Courts will consider whether (a) the debtor made a reasonable effort, but failed, to obtain unsecured credit under sections 364(a) and 364(b) of the Bankruptcy Code, (b) the credit transaction benefits the debtor as necessary to preserve estate assets, and (c) the terms of the credit transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016); *In re Los Angeles Dodgers LLC*, 457 B.R. at 312–13; *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40. Section 364 "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Bray v. Shenandoah Fed. Savs. & Loan Ass'n* (*In re Snowshoe Co.*), 789 F.2d 1085, 1088 (4th Cir. 1986).

32. *First*, to show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections of sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986). In circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *Sky Valley, Inc.*, 100 B.R. at 113; *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986). The Debtors have not been able to obtain unsecured credit or an alternative debtor-in-possession financing on better terms than those reflected in the DIP Credit Agreement, and there are no better offers available to the Debtors or before the Court at this time. Morgner Decl. ¶¶ 20- 25.

33. *Second*, the DIP Facility is necessary to preserve the Debtors' estates. As noted, the Debtors do not currently have sufficient cash flow or liquidity to fund their operations absent approval of the DIP Facility. Adams Decl. ¶ 126-131. In particular, the DIP Facility enables the Debtors to preserve the going concern value of the Virginia Facility operations and the Wyoming R&D Facility, which maximizes value for all stakeholders. *Id*. Absent approval of the DIP Facility, the Debtors would be forced to cease operations and liquidate their assets in piecemeal fashion, likely through a chapter 7 proceeding. *Id*.

34. *Third*, the terms of the DIP Facility are fair, reasonable, and adequate under the circumstances. As stated, the DIP Facility represents the most favorable source of postpetition financing available and is designed to provide the Debtors with sufficient liquidity to undertake the Restructuring Transactions. Morgner Decl. ¶¶ 26-28. The DIP Facility was negotiated at arms' length and in good faith. Morgner Decl. ¶¶ 21-22.

35. In light of the foregoing, the Court should authorize the Debtors to provide the DIP Lenders with superpriority administrative expense status in accordance with the DIP Credit Agreement, as provided for in section 364(c)(1) of the Bankruptcy Code.

ii. The Debtors Should Be Authorized to Obtain Priming Liens Under Section 364(d) of the Bankruptcy Code

36. Section 364(d) provides that debtors may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). The Debtors may incur "priming" liens under the DIP Facility if it is unable to obtain unsecured or junior secured credit and either (a) the affected secured lenders consent, or (b) adequate protection exists for such priming lien.

37. The Debtors are seeking "priming" liens, pursuant to section 364(d)(1) of the Bankruptcy Code, upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date, and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising, that secure the prepetition obligations of the Debtors under the Prepetition Loan Facility, which liens shall be subject to the Carve-Out. As noted, as of the Petition Date, the Debtors are unable to obtain other better financing and have proposed adequate protection liens for the Prepetition Loans in favor of the Prepetition Lenders, to the extent of any diminution in value resulting from the sale, lease, or use by the Debtors of the Prepetition Collateral, the subordination of the Prepetition Liens to the DIP Liens and the Carve-Out, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. *See* Interim Order, ¶¶ 6, 13. Furthermore, the Prepetition Lenders have consented to the priming of their prepetition liens in respect of the Prepetition Loan Facility.

C. THE DEBTORS SHOULD BE AUTHORIZED TO CONTINUE TO USE CASH COLLATERAL

38. For the reasons set forth herein, the Debtors require the use of Cash Collateral (as well as the proceeds of the DIP Facility) for working capital and to fund the Restructuring Transactions. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's Cash Collateral. Section 363(c) provides, in pertinent part, that:

> The trustee 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 [363].

11 U.S.C. § 363(c)(2). Furthermore, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or

without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

39. The Debtors have satisfied the requirements of sections 363(c)(2) and (e) and should be authorized to use cash collateral. The Prepetition Lenders have consented to the Debtors' use of cash collateral in accordance with the terms and conditions of the Interim Order, the DIP Facility, and the Approved Budget. Subject to Court approval, the Debtors are also providing adequate protection (as discussed above) to the Prepetition Lenders. The Debtors therefore submit that the proposed adequate protection is (a) fair and reasonable, (b) necessary to satisfy the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code, and (c) in the best interests of the Debtors and their estates.

D. THE DEBTORS SHOULD BE AUTHORIZED TO PAY FEES REQUIRED BY DIP LOAN DOCUMENTS

40. As described above, and subject to Court approval, the Debtors have agreed to pay certain fees of the DIP Lenders in exchange for their agreement to provide the DIP Facility and consent to the use of Cash Collateral, as applicable. The contemplated fees and other economic terms of the DIP Facility were all negotiated at arm's length. Morgner Decl. ¶ 21-24. Under the circumstances, the terms of the DIP Facility, which include the fees payable in connection therewith, are the best actually available to the Debtors. *Id*. Furthermore, the Debtors submit that the interest payments and fees required by the DIP Facility are reasonable, comparable to other debtor in possession financings, and generally consistent with market terms for companies facing similar circumstances as the Debtors. Morgner Decl. ¶ 21-25. The Debtors believe that under these circumstances, authorization to pay the fees is warranted.

E. THE CARVE-OUT IS APPROPRIATE

41. The DIP Facility subjects the DIP Lenders' security interests, superpriority administrative expense claims, and the adequate protection claims and liens to the Carve-Out. Without the Carve-Out, the Debtors' estates or other parties in interest could be deprived of possible rights and powers because the services professionals might otherwise provide in these chapter 11 cases could be restricted. *See In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties in interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the pendency of the chapter 11 cases by ensuring that assets are available to pay professional fees and the U.S. Trustee's fees, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility and the DIP Orders. Accordingly, the Debtors submit that the Carve-Out is appropriate.

F. THE DIP LENDERS SHOULD BE AFFORDED GOOD-FAITH PROTECTION UNDER SECTION 364(E) OF THE BANKRUPTCY CODE

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

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

11 U.S.C. § 364(e).

43. The DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lenders, and several proposals and counterproposals. Morgner Decl. ¶¶ 22-24. The terms and conditions of the DIP Facility are appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code in accordance with the DIP Credit Agreement. The Court should find that the obligations arising under the DIP Facility and other financial accommodations made to the Debtors have been extended by the DIP Lenders in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and therefore the DIP Lenders are entitled to the protections afforded thereby.

G. MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED

44. The relief requested herein contemplates a modification of the automatic stay to (a) permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, (b) permit the DIP Lender to exercise rights and remedies under certain circumstances, and (c) as otherwise, and to the extent, necessary to effectuate the terms of the Interim Order. These provisions were part of the *quid pro quo* for the Debtors' ability to obtain the DIP Facility and use cash collateral as provided in the DIP Credit Agreement and in the Interim Order. Notably, the exercise of remedies (including remedies with respect to prepetition claims and collateral) will be subject to five business days' notice to allow the Debtors to cure or seek other relief. *See* Interim Order ¶8(a). Under these circumstances, the Debtors believe that the

extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

H. IMMEDIATE ACCESS TO CASH COLLATERAL AND DIP FACILITY SHOULD BE APPROVED

45. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See In re Ames Dep't Stores*, 115 B.R. at 36.

46. Here, the Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly. The Debtors have an immediate need for continued access to cash collateral and DIP Loans, and any disruption in the use of cash collateral or ability to obtain the DIP Loans would cause a severe decrease in the value of the Debtors' estates by preventing the Debtors from making necessary disbursements and otherwise operating in the ordinary course. Adams Decl. ¶¶ 126-131. As set forth in the Approved Budget, the Debtors expect that they will need approximately $12 million during the interim period and approximately $20.7 million in total through the course of these cases. *Id.* Given the approximately $12 million that the Debtors are expected to fund the business during the interim period, the proposed draw structure is necessary and appropriately tailored to the Debtors' funding needs. *Id.* Absent interim relief, the Debtors will be unable to, among other things, fund payroll for employees, satisfy their other working capital and general corporate requirements, and continue operating the Virginia Facility. Adams Decl. ¶ 131. As noted, particularly given the perishable nature of the Debtors' goods, even a momentary shut down of the Debtors' facilities could result

in a significant deterioration in the value of the Debtors' businesses to the detriment of all stakeholders. *Id*. Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avoid the value destruction that would otherwise result in immediate and irreparable harm to the Debtors' estates.

REQUEST FOR FINAL HEARING

47. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for consideration of entry of the Final Order. The Debtors request that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of any objections by first class mail upon the notice parties listed below. The Debtors further request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001(c)(2).

EMERGENCY CONSIDERATION

48. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations and significantly impact the Debtors' ability to swiftly and efficiently move forward with the value-maximizing Restructuring Transactions. Accordingly, the Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

49. The Debtors request a waiver of any applicable notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). The relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors' ongoing operations and value-maximization process. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

50. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

51. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors; (c) counsel to the DIP Lenders; (d) counsel to the Stalking Horse Bidder; (e) counsel to the Plan Sponsors; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; (h) the state attorneys general for states in which the Debtors conduct business; (i) all parties known by the Debtors to hold or assert a lien on any asset of the Debtors; (j) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (k) any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be given

The Debtors request entry of an order, substantially in the form attached hereto, granting the relief requested herein and granting such other relief as is just and proper.

Dated: March 23, 2025
Houston, Texas

/s/ Duston K. McFaul
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Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Duston K. McFaul

Certificate of Service

I certify that on March 23, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Duston K. McFaul

Exhibit A

Interim DIP Order

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

In re:	)	Chapter 11
	)	
PLENTY UNLIMITED TEXAS LLC, et al.,[1]	)	Case No. 25-90105 (CML)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	**Re: Docket No. [•]**

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

Upon the motion (the "DIP Motion")[2] of Plenty Unlimited Inc. and each of its affiliates that are debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), 507 and 552 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"), Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules") and the Procedures for Complex Cases promulgated in the Southern District of Texas (the "Complex Case

[1] The Debtors in this chapter 11 case, together with the last four digits of the Debtors' federal tax identification number, are: Plenty Unlimited Texas LLC (3500); Plenty Unlimited Inc. (0916); MJNN LLC (N/A); White Farms LLC (N/A); Blue Gardens LLC (8487); Bright Agrotech, Inc. (4106); and P F2 VA LLC (9633). The Debtors' service address is 1460 Commerce Drive, Laramie, WY 82070.

[2] Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Credit Agreement (as defined herein) or the DIP Motion, as applicable.

Procedures" and together with the Local Rules, the "Bankruptcy Local Rules"), seeking entry of this interim order (this "Interim Order") and the Final Order (as defined herein) as applicable, among other things:

(a) authorizing Plenty Unlimited Inc. and Plenty Unlimited Texas LLC (the "DIP Borrowers") to obtain postpetition financing ("DIP Financing") pursuant to a superpriority, senior secured and priming debtor-in-possession term loan credit facility (the "DIP Facility") subject to the terms and conditions set forth in that certain Superpriority Senior Secured Debtor-in-Possession Loan Agreement attached hereto as **Exhibit 1** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement"), by and among the DIP Borrowers, the DIP guarantors (collectively, the "DIP Guarantors"), the lenders from time to time party thereto (collectively the "DIP Lenders") and GLAS USA LLC, as Administrative Agent and Collateral Agent (in its respective capacities, the "DIP Agent" and, collectively, with the DIP Lenders, the "DIP Secured Parties"), in an aggregate principal amount not to exceed \$20,700,000 (the commitments in respect thereof, the "DIP Commitments") of new money superpriority senior secured term loans in the aggregate principal amount of \$20,700,000 (the term loans made thereunder, the "DIP Term Loans"), of which \$12,000,000 will be immediately available upon entry of this Interim Order in accordance with the terms and conditions set forth in the DIP Credit Agreement and \$8,700,000 will be available as a delayed draw term loan, subject to the terms set forth in the DIP Credit Agreement; and

(b) authorizing the Debtors to execute, deliver and perform under the DIP Credit Agreement and all other loan documentation related to the DIP Facility, including, without limitation, as applicable, security agreements, pledge agreements, control agreements, mortgages, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, and such other documents that may be reasonably requested by the DIP Agent and the DIP Lenders in connection with the DIP Facility, in each case, as amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, together with the DIP Credit Agreement and any other Credit Documents (as defined in the DIP Credit Agreement), and this Interim Order, the "DIP Documents");

(c) authorizing the Debtors to incur and jointly and severally, as applicable, guarantee loans, advances, extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees, backstop premiums, administrative agency fees, collateral agency or security trustee fees and any other fees or premiums payable pursuant to the DIP Documents) costs, expenses and other liabilities, and all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other obligations due or payable under the DIP Documents (collectively, the "DIP Obligations"), and to perform such other and further acts as may be required, necessary, desirable or appropriate in connection therewith;

(d) subject to the Carve-Out (as defined herein), granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations of the Debtors;

(e) granting to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Debtors' estates and all proceeds thereof, including, without limitation, all Cash Collateral (as defined herein), on the terms described herein, and, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds (as defined herein), in each case subject to the Carve-Out;

(f) authorizing the Debtors, the DIP Agent, acting at the direction of the Required Lenders (as defined in the DIP Credit Agreement), and the Prepetition Agent and the other respective Prepetition Secured Parties (each as defined below), to take all commercially reasonable actions to implement and effectuate the terms of this Interim Order;

(g) waiving (a) all rights to surcharge the Prepetition Collateral (as defined herein) and the DIP Collateral (as defined herein) (together, the "Collateral") pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order;

(h) waiving the equitable doctrine of "marshaling" and other similar doctrines (i) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (ii) with respect to any of the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties) (as defined herein); *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order;

(i) authorizing the Debtors to use proceeds of the DIP Facility and Cash Collateral (as defined herein) solely in accordance with this Interim Order and the DIP Documents;

(j) authorizing the Debtors to pay the DIP Obligations as such become earned, due and payable to the extent provided in, and in accordance with, this Interim Order and the DIP Documents;

(k) subject to the restrictions set forth in the DIP Documents and this Interim Order, authorizing the Debtors to use the Prepetition Collateral (as defined herein), including Cash Collateral (as defined herein) of the Prepetition Secured Parties under the Prepetition Senior Secured Note Documents (as defined herein), and provide adequate protection as and to the extent set forth herein, to the Prepetition Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution in value resulting from the imposition of the automatic stay under section 362 of the Bankruptcy Code (the "Automatic Stay"), the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral), and the priming of their respective interests in the Prepetition Collateral (including Cash Collateral);

(l) vacating or modifying the Automatic Stay to the extent set forth herein and to the extent necessary to permit the Debtors and their affiliates, the DIP Secured Parties and the Prepetition Secured Parties to implement and effectuate the terms and provisions of this Interim Order, the DIP Documents and, upon entry, the Final Order and to deliver any notices of termination described below and as further set forth herein;

(m) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order and, upon entry, the Final Order; and;

(n) scheduling a final hearing (the "Final Hearing") to consider final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order"), as set forth in the DIP Motion and the DIP Documents filed with this Court and approving the form of notice with respect to the Final Hearing.

The Court (as defined herein) having considered the interim relief requested in the DIP Motion, the exhibits attached thereto, the (i) *Declaration of Daniel Malech in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Malech Declaration"), (ii) *Declaration of Colin Adams in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Adams Declaration"), and (iii) *Declaration of Richard Morgner in Support of (1) Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) To Obtain Postpetition Financing and (B) To Utilize Cash Collateral, (II) Granting Adequate Protection and (III)*

Scheduling Final Hearing and (2) Debtors' Emergency Motion for Entry of an Order (I)(A) Approving Bid Procedures and Authorizing Sale Transaction; (B) Approving the Selection of Stalking Horse Bidder and the Debtors' Entry Into the Stalking Horse Agreement; (C) Scheduling Auction and Sale Hearing; (D) Approving Sale Notices; (E) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief (the "Morgner Declaration" and, together with the Malech Declaration and Adams Declaration, the "DIP Declarations"), the available DIP Documents, and the evidence submitted and arguments made at the interim hearing held on March 24, 2025 (the "Interim Hearing"); and due and sufficient notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Bankruptcy Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

A. *Petition Date*. On March 23, 2025 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court"). On [•], 2025, this Court entered an order approving the joint administration of 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. *Jurisdiction and Venue*. This Court has jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the DIP Motion are proper before this Court pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 363(m), 364(c), 364(d), 364(e), 503, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1.

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.

D. *Committee Formation*. As of the date hereof, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Creditors' Committee").

E. *Notice*. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Under the circumstances, proper, timely, adequate and sufficient notice of the Interim Hearing and the DIP Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

F. *Cash Collateral*. As used herein, the term "Cash Collateral" shall mean all of the Debtors' cash wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of any of the Prepetition Secured Parties and the DIP Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

G. *Debtors' Stipulations*. Subject only to the limitations contained in paragraph 18 hereof, and after consultation with their attorneys and financial advisors, and in exchange for and as a material inducement to the Prepetition Secured Parties to agree to consent to access to the cash collateral, and subordination of the Prepetition Liens (as defined below) to the Carve-Out (as defined below) and DIP Liens (as defined below), the Debtors admit, stipulate and agree that:

(a) Prepetition Senior Secured Bridge Note. Pursuant to that certain Third Amended and Restated Note due March 28, 2025 (as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Senior Secured Bridge Note" and the other Credit Documents (as defined in

Prepetition Senior Secured Bridge Note) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Senior Secured Note Documents") by and among (1) Plenty Unlimited Inc., as issuer (the "Prepetition Senior Secured Bridge Note Issuer"), (2) each of the debtor guarantors from time to time party thereto (collectively, the "Prepetition Senior Secured Bridge Note Guarantors" and, together with the Prepetition Senior Secured Bridge Note Issuer, the "Prepetition Senior Secured Bridge Note Parties"), (3) the Holders (as defined in the Prepetition Senior Secured Bridge Note) from time to time party thereto (collectively, in their capacities as such, the "Prepetition Senior Secured Bridge Note Holders"), and (4) One Madison Group, Plenty II, LLC, as collateral agent (in such capacity, the "Prepetition Agent" and, collectively, with the Prepetition Senior Secured Bridge Note Holders, the "Prepetition Secured Parties"), the Prepetition Secured Parties have extended the Prepetition Senior Secured Bridge Note, for the benefit of the Prepetition Secured Parties.

(b) Prepetition Obligations. The Prepetition Senior Secured Bridge Note Parties are justly and lawfully indebted and liable to the Prepetition Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount as of the Petition Date of not less than $8.675 million of outstanding Prepetition Senior Secured Bridge Note, which amounts were issued pursuant to, and in accordance with the Prepetition Senior Secured Note Documents, plus accrued and unpaid interest thereon, premiums, reimbursement obligations (contingent or otherwise), fees, costs, expenses (including any attorneys', accountants', appraisers', and financial advisors' fees and expenses), charges, indemnities, and any other amounts, liabilities, or obligations of whatever nature, whenever arising or accruing (whether before or after the Petition Date), that may be due, owing, or chargeable in connection therewith, in each case, as and to the extent provided in the Prepetition Senior Secured Note Documents (collectively, the "Prepetition Obligations").

(c) Prepetition Liens. As more fully set forth in the Prepetition Senior Secured Note Documents, prior to the Petition Date, to secure the Prepetition Obligations, the Prepetition Senior Secured Bridge Note Parties granted to the Prepetition Agent, in its capacity as collateral agent, for its benefit and for the benefit of the other Prepetition Secured Parties, valid, binding, non-avoidable, properly perfected and enforceable first priority continuing liens on and security interests (collectively, the "Prepetition Liens") in the "Collateral" as defined in the Prepetition Senior Secured Note Documents, including, for the avoidance of doubt, Cash Collateral (the "Prepetition Collateral").

(d) *Validity, Perfection and Priority of Prepetition Senior Liens*. The Debtors acknowledge and agree that, as of the Petition Date, (1) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (2) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only certain liens senior by operation of law (solely to the extent any such liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the "Prepetition Permitted Prior Liens"); (3) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Senior Secured Bridge Note Parties enforceable in accordance with the terms of the applicable the Prepetition Senior Secured Note Documents; (4) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the

Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (5) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Senior Secured Note Documents; and (6) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing the Prepetition Obligations.

(e) *No Claims or Causes of Action*. No claims or causes of action held by the Debtors or their estates exist against, or with respect to any Prepetition Secured Party (in its capacity as such) under any agreements by and among the Debtors and such Prepetition Secured Parties.

(f) *Release*. Effective as of the date of entry of this Interim Order, each of the Debtors and (subject to paragraph 18 hereof) the Debtors' estates, on its and their own behalf, on behalf of its and their respective past, present and future predecessors, heirs, successors, subsidiaries, and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties and the DIP Secured Parties and each of their respective Representatives (as defined herein), in their capacity as Prepetition Secured Parties, DIP Secured Parties, and Representatives of the same (collectively, the "Released Parties"), from any and all (a) obligations and liabilities to the Debtors (and their successors and assigns) and (b) claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action, in each case, arising prior to the date of this Interim Order of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Senior Secured Note Documents, the DIP Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions and agreements reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order; *provided* that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party. For the avoidance of doubt, nothing in this release shall relieve the DIP Secured Parties or the Debtors of their obligations under the DIP Documents from and after the date of this Interim Order.

(g) *No Control*. None of the Prepetition Secured Parties, by virtue of any actions taken with respect to, in connection with, related to or arising from the Prepetition Senior Secured Note Documents or the DIP Documents, control (or have in the past controlled) 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.

H. *Corporate Authority*. Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

I. *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 and for authorization of the Debtors to obtain financing and use of Cash Collateral pursuant to this Interim Order and the DIP Documents.

(ii) The Debtors have an immediate and critical need to obtain the DIP Financing and to use the Prepetition Collateral (including Cash Collateral) in order to, among other things (a) permit the orderly continuation of the operation of their business, (b) maintain business relationships with vendors, suppliers and customers, (c) make payroll, (d) make capital expenditures, (e) satisfy other working capital and operational needs and (f) fund expenses of the Chapter 11 Cases. In the absence of the DIP Facility and the use of Cash Collateral, the Debtors' business and estates would suffer immediate and irreparable harm. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, and the 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 value of the Debtors and to a successful reorganization of the Debtors.

(iii) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the

DIP Liens and the DIP Superpriority Claims (each as defined herein) and incurring the Adequate Protection Obligations (as defined herein) (in each case subject to the Carve-Out to the extent set forth herein, under the terms and conditions set forth in this Interim Order and in the DIP Documents).

(iv) The Debtors may continue to collect cash, rents, income, offspring, products, proceeds, and profits generated from the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitute Prepetition Collateral (including Cash Collateral) under the Prepetition Senior Secured Note Documents that are subject to the Prepetition Secured Parties' security interests as set forth in the Prepetition Senior Secured Note Documents, as applicable.

(v) The Debtors desire to use a portion of the cash, rents, income, offspring, products, proceeds and profits described in the preceding paragraph that constitute Cash Collateral of the Prepetition Secured Parties under section 363(a) of the Bankruptcy Code in their business operations. Certain prepetition rents, income, offspring, products, proceeds, and profits, in existence as of the Petition Date or hereafter created, including balances of funds in the Debtors' prepetition and postpetition operating bank accounts, also constitute Cash Collateral.

(vi) Based on the DIP Motion, the DIP Declarations and the record presented to the Court at the Interim Hearing, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Parties as and to the extent set forth in paragraph 14 of this Interim Order (the "<u>Adequate Protection</u>"), and the terms on which the Debtors 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 Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(vii) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties and the Prepetition Secured Parties, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and any DIP Obligations, shall be deemed to have been extended by the DIP Agent and the other 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.

(viii) The Prepetition Secured Parties acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including the incurrence and payment of and performance under the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), 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) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(ix) 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 DIP 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 (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including the Cash Collateral), and the Prepetition Secured Parties in each case have consented or are deemed hereby to have consented to the use of the Prepetition Collateral (including the Cash Collateral), the priming of the respective Prepetition Liens by the DIP Liens pursuant to the terms set forth in this Interim Order and the DIP Documents; *provided* that nothing in this Interim Order or the DIP Documents shall (x) be construed as the affirmative consent by 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 to the extent such consent has been or is deemed to have been given, (y) 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) other than as contemplated by the DIP Financing authorized by this Interim Order or (z) prejudice, limit or otherwise impair the rights of any Prepetition Secured Parties to seek new, different or additional adequate protection, as applicable, or assert any rights of the Prepetition Secured Parties, and the rights of any other party in interest, including the Debtors, to object to such relief are hereby preserved.

(x) The Debtors have prepared and delivered to the respective advisors to the DIP Secured Parties an initial budget (the "Initial DIP Budget"), attached hereto as Exhibit 2. The

Initial DIP Budget reflects, among other things, the Debtors' projected sources and uses of cash, anticipated disbursements and liquidity for each calendar week covered thereby, in form and substance satisfactory to the Required Lenders. The Initial DIP Budget may be modified, amended, extended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by the Required Lenders, shall supplement and replace the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each subsequent approved budget, shall constitute without duplication, an "Approved Budget"). The Initial DIP Budget has been thoroughly reviewed by the Debtors and their management and their advisors, and the Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Secured Parties are relying, in part, upon the Debtors' agreement to comply with the Approved Budget (subject only to permitted variances), the other DIP Documents and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order and the DIP Documents.

(xi) The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral and as a material inducement to the DIP Secured Parties' agreement to provide the DIP Facility and the Prepetition Secured Parties' consent to the use of Cash Collateral, that each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits with respect to any of the Prepetition Collateral; *provided* that the foregoing shall be without prejudice to the terms of the Final Order with respect to the period from and after the entry of the Final Order.

J. *Immediate Entry*. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2), (c)(2) and 6003. Absent granting the relief set forth in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties. The DIP Motion and this Interim Order comply with the requirements of Local Rule 4001-1(b).

K. *Prepetition Permitted Prior Liens; Continuation of Prepetition Liens*. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Prior 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 other DIP Secured Parties or the Prepetition Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Prior Lien and/or security interests, except as otherwise agreed among such parties prior to the Petition Date, and the rights of the Debtors, the DIP Agent, the other DIP Secured Parties, and the Prepetition Secured Parties to raise such challenges under applicable bankruptcy and non-bankruptcy law, including without limitation Va. Code §§ 11-4.6(B), 43-7(A), 43-9, 43-20, 43-21, and 43-23, are expressly reserved and preserved. 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 until indefeasible payment in full of all Prepetition Obligations and all DIP Obligations, respectively.

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

IT IS HEREBY ORDERED THAT:

1. *Motion Granted*. The interim relief sought in the DIP Motion is granted, the interim financing described herein is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Interim Order. All objections to entry of this Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits.

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

(a) The Debtors 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. The DIP Borrower is hereby authorized to borrow money pursuant to the DIP Credit Agreement and each DIP Guarantor is hereby authorized to provide a guaranty of payment in respect of the DIP Borrower's obligations with respect to such borrowings, subject to any limitations on borrowing under the DIP Documents, which borrowings shall be used for all purposes permitted under the DIP Documents and this Interim Order (and subject to and in accordance with the Approved Budget) (subject to any permitted variances).

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents (including, without limitation, the execution or recordation of pledge and security agreements, guarantees, mortgages, financing statements and other similar documents), and to pay all premiums, fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable for the Debtors' 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 and one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Debtors and the DIP Agent (acting in accordance with the terms of the DIP Credit Agreement and at the direction of the Required Lenders) may agree, it being understood that no further approval of this 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 (including attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder. Updates, modifications and supplements to the Approved Budget shall not require any further approval of this Court.

(ii) the non-refundable payment to the DIP Secured Parties, as the case may be, of all fees and premiums, including (without limitation) any amendment fees, prepayment premiums, backstop premiums, early termination fees, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's fees, collateral agent's or security trustee's fees, upfront fees, upfront premiums, closing fees, commitment fees, closing date fees, exit premiums or original issue discount or agency fees, indemnities and professional fees and expenses (subject to the terms of paragraph 17 below) (the payment of which fees and expenses shall be irrevocable, and shall be, and shall be deemed to have been, approved upon entry of this Interim Order, whether any such fees or premiums arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise by any person or entity) and any amounts due (or that may become due) in respect of any indemnification and expense reimbursement obligations, in each case referred to in the DIP Documents (or in any separate letter agreements) and the costs and expenses as may be due from time to time, including, without limitation, the fees and expenses of the professionals retained by, or on behalf of, any of the DIP Agent or the other DIP Secured Parties (subject to the terms of paragraph 17 below) payable under the DIP Loan Documents or otherwise (including without limitation those of Davis Polk & Wardwell LLP, Sullivan & Cromwell LLP, Porter Hedges LLP, Moses & Singer LLP and any local legal counsel or other advisors in any foreign jurisdictions and any other advisors as are permitted under the applicable DIP Documents), in each case, as provided for hereunder and in the DIP Documents (collectively, the "DIP Fees and Expenses"), without the need to file retention motions or fee applications; *provided*, however, that the DIP Fees and Expenses incurred prior to, and which are unpaid as of, the Closing Date (as defined in the DIP Credit Agreement) shall be paid indefeasibly by the Debtors upon the occurrence of the Closing Date; and

(iii) the performance of all other acts required under or in connection with this Interim Order and the DIP Documents, including the granting of the DIP Liens and the DIP Superpriority Claims and perfection of the DIP Liens and DIP Superpriority

Claims as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the DIP Documents.

3. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute legal, valid, binding and non-avoidable obligations of the Debtors, enforceable against each Debtor and their estates in accordance with the terms of the DIP Documents and this Interim Order, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon execution and delivery of the DIP Documents, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Agent or the other DIP Secured Parties, in each case, under, or secured by, the DIP Documents or this Interim Order, including all principal, interest, costs, fees, expenses (including, without limitation, the DIP Fees and Expenses), premiums, indemnities and other amounts under the DIP Documents (including this Interim Order). The Debtors shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to any of the DIP Secured Parties (including their respective Representatives) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 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, avoidance,

reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. *Carve-Out*.

(a) *Priority of Carve-Out*. Each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and the Adequate Protection Claims shall be subject and subordinate to payment of the Carve-Out.

(b) *Carve-Out.* As used in this Interim Order, the term "Carve-Out" means 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, if any, pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in (iii) below); (ii) all reasonable and documented fees and expenses up to $100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors (the "Debtor Professionals") or the Creditors' Committee pursuant to section 327, 328, 363, or 1103 of the Bankruptcy Code (the "Committee Professionals", and together with the Debtor Professionals, the "Estate Professionals") (in each case, other than any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors) at any time before or on the day of delivery by the DIP Agent (acting at the direction of Required Lenders) of a Carve-Out Trigger Notice (as defined below) and without regard to whether such fees and expenses are provided for in any Approved Budget, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (the amounts set forth in this clause (iii) being the "Pre-Carve-Out Trigger Notice Cap"); and (iv) Allowed Professional Fees of Estate Professionals in an aggregate amount not to exceed $1,200,000 incurred on or after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, final order or otherwise, (the amount set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap" and, together with the Pre-Carve-Out Trigger Notice Cap and the amounts set forth in clauses (i) through (ii), the "Carve-Out Cap"); provided that nothing herein shall be construed to impair the ability of any party in interest to object to the fees, expenses, reimbursement or compensation described in this paragraph 4(b) on any grounds. The Carve-Out shall be subject to the applicable restrictions on the use of proceeds of the DIP Loans and Cash Collateral.

(c) Within five (5) business days of the initial funding of the DIP Loans, the Debtors shall fund into an account not subject to the control of the DIP Agent or the Prepetition Agent or any of the DIP Lenders or Prepetition Secured Parties (the "Carve-Out Account") an amount equal to the total budgeted Debtor Professionals' fees, respectively, for the first two (2) weeks set forth in the Approved Budget and, thereafter, the Debtors are authorized to transfer into the Carve-Out Account on a weekly basis cash in an amount equal to the estimated Debtor Professionals' fees (excluding any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors) for the next unfunded week set forth in the Approved Budget, which shall be determined by the applicable Debtor Professional in its reasonable discretion. Thereafter, the Debtors shall use such funds held in the Carve-Out Account solely to pay Debtors' Professional fees as they become allowed and payable pursuant to interim or final orders of the Court; *provided*, that the Debtors' obligations to pay the Allowed Professional Fees of the Estate Professionals shall not be limited or deemed limited to funds held in the Carve-Out Account.

(d) Immediately upon the delivery of a Carve-Out Trigger Notice (as defined below), and prior to the payment of any DIP Obligations, the Debtors shall be required to deposit into the Carve-Out Account cash held by the Debtors (which deposit shall be deemed approved under the DIP Documents) in an amount equal to the difference between the Carve-Out Cap and the balance held in the Carve-Out Account as of the Carve-Out Trigger Notice Date (as defined below). Notwithstanding anything to the contrary herein or in the DIP Documents, following delivery of a Carve-Out Trigger Notice, neither the DIP Agent nor the Prepetition Agent shall sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Account has been fully funded as permitted above in an amount equal to all obligations benefitting from the Carve-Out. The amounts in the Carve-Out Account shall be available only to satisfy Allowed Professional Fees and other amounts included in the Carve-Out until such amounts are paid in full. The amount in the Carve-Out Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve-Out Trigger Notice, and the Carve-Out Account shall not be replenished for such amounts so paid. The failure of the Carve-Out Account to satisfy in full the amount set forth in the Carve-Out shall not affect the priority of the Carve-Out. For the avoidance of doubt, (i) disbursements by the Debtors from the Carve-Out Account shall not constitute loans or indebtedness under the DIP Documents or the Prepetition Senior Secured Note Documents or otherwise increase or reduce the DIP Obligations or the Prepetition Obligations, and (ii) the incurrence or payment of any Carve-Out shall not be restricted by the Approved Budget. In no way shall the Carve-Out, the Carve-Out Account, any Approved Budget, or anything contained herein be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by or any other administrative expense claims that the Estate Professionals may assert against the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise).

(e) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email by the DIP Agent (acting at the direction of the Required Lenders) (or, after the applicable DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, any Prepetition Agent) to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may only be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) (or, after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, any occurrence that would constitute an Event of Default hereunder and that is continuing), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(f) On the day on which a Carve-Out Trigger Notice is received by the Debtors (the "Carve-Out Trigger Notice Date"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date (net of any professional retainers) and any available cash thereafter to fund the Carve-Out Account in cash in an amount equal to (but not to exceed) the Carve-Out Cap, and immediately following receipt of a Carve-Out Trigger Notice, and prior to the payment of any Obligations, the Debtors shall be required to deposit to the Carve-Out Account an amount equal to the applicable Carve-Out Cap (which shall be determined, in the case of the Pre-Carve-Out Trigger Notice Cap by the applicable Estate Professionals in good-faith in their reasonable discretion based on the amount of then-unpaid Allowed Professional Fees, and may include a reasonable estimate of the applicable Estate Professionals' then-incurred fees and expenses not yet allowed) less any amount then held in the Carve-Out Account as of the Carve-Out Trigger Notice Date pursuant to this paragraph 4.

(g) For the avoidance of doubt, to the extent that professional fees and expenses of the Estate Professionals have been incurred by the Debtors or a Creditors' Committee (if appointed) at any time before or on the first business day after delivery by the DIP Agent (acting at the direction of the Required Lenders) of a Carve-Out Trigger Notice but have not yet been allowed by the Court, such professional fees and expenses of the Estate Professionals shall constitute Allowed Professional Fees benefiting from the Carve-Out upon their allowance by the Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Carve-Out Account shall include such professional fees and expenses.

(h) The DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or expenses of any Estate Professionals incurred in connection with the Chapter 11 Cases or any Successor Case under any chapter of the Bankruptcy Code, regardless of whether payment of such fees or disbursement has been allowed by the Court. Nothing in this Interim Order or otherwise shall be construed to obligate any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties in any way to pay compensation to or reimburse expenses of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.

(i) All funds in the Carve-Out Account shall be used first to pay all obligations benefitting from the Pre-Carve-Out Trigger Notice Cap, until paid in full, and then the obligations benefitting from the Post-Carve-Out Trigger Notice Cap. If, after paying all amounts set forth in the definition of Carve-Out, the Carve-Out Account has not been reduced to zero, all remaining funds in the Carve-Out Account shall be distributed to the DIP Agent on account of the DIP Obligations.

5. *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 Debtors on a joint and several basis (without the need to file any proof of claim) with now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, including any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 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") and, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, shall 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 postpetition property of the Debtors and all proceeds thereof (excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions") but, subject to the entry of the Final Order, including any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds")) in accordance with the DIP Documents, this Interim Order or the Final Order, subject and subordinate only to 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.

6. *DIP Liens*. As security for the DIP Obligations, effective and automatically and properly perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filing by the Debtors or any of the DIP Secured Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements, intellectual property filings or other similar documents, notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates, or the possession or control by the DIP Agent of, or over, any Collateral, without any further action by the DIP Agent or the DIP Secured Parties, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security interests and liens granted to the DIP Agent, for its benefit and for the benefit of the other DIP Secured Parties, pursuant to this Interim Order and the DIP Documents, the "DIP Liens") are hereby granted to the DIP Agent for its own benefit and the benefit of the other DIP Secured Parties (all property identified in clauses (a) through (c) below being collectively referred to as the "DIP Collateral").

(a) *Liens 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, intangible, real, personal or mixed prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code (each, to the extent in compliance as subject to any bar date order entered by this Court), including, without limitation, any and all unencumbered cash of the Debtors and any investment of 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, goodwill, causes of action, insurance policies and rights, claims and proceeds from insurance, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper (including electronic chattel paper and tangible chattel paper), interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, equity interests of subsidiaries, joint ventures and other entities, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise (the "Unencumbered Property"), in each case other than the Avoidance Actions (but, for the avoidance of doubt, subject to entry of the Final Order, "Unencumbered Property" shall include Avoidance Proceeds).

(b) *Liens Priming Prepetition Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors subject to the Prepetition Liens, regardless of where located, regardless whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected (the "Priming Liens"), which Priming Liens shall be senior in all respects to the interests of the Prepetition Secured Parties arising from the current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted to the Prepetition Secured Parties) (the "Primed Liens").

(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 tangible and intangible prepetition and postpetition property of the Debtors that is subject to (i) valid, perfected and non-avoidable senior liens in existence immediately prior to the Petition Date (that are senior to the Primed Liens) or (ii) valid and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date, solely to the extent permitted by section 546(b) of the Bankruptcy Code (each, to the extent in compliance as subject to any bar date order entered by this Court), which shall be (x) immediately junior and subordinate to any such valid, perfected and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date, and (y) any such valid and non-avoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date solely as permitted by section 546(b) of the Bankruptcy Code; *provided* that nothing in the foregoing clauses (i) and (ii) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and

(d) *Liens Senior to Certain Other Liens.* The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or 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 Debtors, or (C) any intercompany or affiliate liens of the Debtors or security interests of the Debtors; 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.

7. *Protection of DIP Lenders' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding DIP Commitments under the DIP Documents, the Prepetition Secured Parties shall: (i) other than with the consent of the Required Lenders, 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 Senior Secured Note Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against the 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, the 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; (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 its security interests in the DIP Collateral other than as necessary to give effect to this Interim Order other than, (x) solely as to this clause (iii), the DIP Agent filing financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or (y) as may be required by applicable state law or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (iv) deliver or cause to be delivered, at the Debtors' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent or the other DIP Secured Parties or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or Court-approved disposition.

(b) To the extent that the Prepetition Agent or any other Prepetition Secured Party is a secured party under any account control agreement, listed as an additional insured, loss payee under any of the Debtors' insurance policies, or is the secured party under any loan document, financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction to validate, attach, perfect, or prioritize liens (any such instrument, a "Security Document"), the DIP Agent or the Prepetition Agent (as applicable) shall also be deemed to be the secured party under each such Security Document, and shall have all the rights and powers attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received subject to the Carve-Out and in accordance with the terms of the Interim Order and/or the Final Order, as applicable, and the other DIP Documents. 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, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agent and the other DIP Secured Parties, and such Prepetition Secured Party shall comply with the instructions of the DIP Agent, acting at the direction of the Required Lenders, with respect to the exercise of such control or possession.

(c) Any Prepetition Collateral, or proceeds thereof, that are subject to the Primed Liens received by the Prepetition Secured Parties in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by a Prepetition Secured Party 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 by the Prepetition Secured Parties, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agent is hereby authorized to make any such endorsements as agent for the Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

8. *Rights and Remedies Upon Event of Default*. Upon the occurrence and during the continuation of an Event of Default that has not been waived by the Required Lenders and following delivery of written notice (a "Termination Notice") (including by e-mail) on not less than five (5) business days' notice (such five (5) business day period, the "DIP Agent Remedies Notice Period") to restructuring counsel to the Debtors, lead restructuring counsel to the Prepetition Agent, counsel to the Creditors' Committee (if any), and the U.S. Trustee, (the "Remedies Notice Parties"), the DIP Agent may (acting at the direction of the Required Lenders) (and any automatic stay otherwise applicable to the DIP Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of this Interim Order (including this paragraph) is hereby modified), without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Agent (acting at the direction of the Required Lenders) to, unless the Court orders otherwise (*provided* that during the DIP Agent Remedies Notice Period, the Debtors, the Creditors' Committee (if any) and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Secured Parties hereby consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing or authorizing the non-consensual use of Cash Collateral, and *provided, further* that if a request for such hearing is made prior to the end of the DIP Agent Remedies Notice Period, then the DIP Agent Remedies Notice Period shall be continued until the

Court hears and rules with respect thereto): (a) immediately terminate and/or revoke the Debtors' right under this Interim Order and any other DIP Documents to use any Cash Collateral (subject to the Carve-Out and related provisions) and except as necessary for the Debtors' to pay employee and tax related obligations and pay expenses necessary to the survival of the Debtors' business, in accordance with the Approved Budget and this Interim Order, (b) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Secured Parties but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (c) declare all DIP Obligations to be immediately due and payable; and (d) invoke the right to charge interest at the default rate under the DIP Documents. Upon delivery of such Termination Notice by the DIP Agent (acting at the direction of the Required Lenders), without further notice to or order of the Court and subject to the Carve-Out and related provisions, the DIP Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP Obligations hereunder will, subject to the expiration of the DIP Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Secured Parties will have no obligation to provide any DIP Loans or other financial accommodations. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of same on the docket. In addition, upon repayment of all DIP Obligations, without further notice to or order of the Court, the Prepetition Secured Parties' consent to use Cash Collateral hereunder will automatically terminate.

(a) Following an Event of Default and the delivery of the Termination Notice, but prior to exercising the remedies set forth in this subparagraph 8(a) or any other remedies (other than those set forth in the above paragraph 8), the DIP Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "<u>Stay Relief Motion</u>") on not less than five

(5) business days' notice to the Remedies Notice Parties (which may run concurrently with the DIP Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the DIP Secured Parties to, subject to the Carve-Out and related provisions: (a) freeze monies or balances in the Debtors' accounts; (b) immediately set-off any and all amounts in accounts maintained by the Debtors with any DIP Agent or the other DIP Secured Parties against the DIP Obligations, (c) enforce any and all rights against the DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors' premises, sale or disposition of the DIP Collateral; and (d) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Documents or applicable law.

(b) If the DIP Secured Parties are permitted by order of the Court to take any enforcement action with respect to the DIP Collateral following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Secured Parties in their efforts to enforce their security interest in the DIP Collateral, and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, the Debtors may use the proceeds of the DIP Facility to the extent drawn prior to the occurrence of Event of Default or Cash Collateral to fund operations in accordance with the Approved Budget and the terms of the DIP Documents. The Debtors shall promptly cause of copy of any Stay Relief Motion to be served on any party that has filed a request for notices with this Court.

(c) No rights, protections or remedies of the DIP Agent or the other DIP Secured Parties, the Prepetition Agent or the other Prepetition 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 Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

9. *Limitation on Charging Expenses Against Collateral.* No costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (as defined below) 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); 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 at the direction of the Required Lenders) or the Prepetition Secured Parties, as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, the other 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 Agent, the other DIP Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment or claims against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise; *provided* further that the foregoing waiver shall be without prejudice to any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order.

10. *No Marshaling.* In no event shall the DIP Agent, the other 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, the DIP Obligations, the Prepetition Obligations, or

the Prepetition Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order.

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

12. *Use of Cash Collateral*. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order, to use all Cash Collateral in accordance with the DIP Documents and the Approved Budget; *provided* that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

13. *Adequate Protection*. 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 all Prepetition Collateral (including Cash Collateral) in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' respective

interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Prepetition Liens by the DIP Liens pursuant to the DIP Documents and this Interim Order, the grant of any other lien under section 364 of the Bankruptcy Code or the stay of the Prepetition Secured Parties' rights under the Prepetition Collateral, the payment of any amounts under the Carve-Out or pursuant to this Interim Order, the Final Order or any other order of the Court or provision of the Bankruptcy Code or otherwise, and the imposition of the Automatic Stay (the "Adequate Protection Claims"), In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following as Adequate Protection for, and to secure repayment of an amount equal to such Adequate Protection Claims, and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the "Adequate Protection Obligations"):

(a) *Adequate Protection Liens*. The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) in the amount of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the "Adequate Protection Liens"), in each case subject and subordinate only to the DIP Liens (and any Prepetition Permitted Prior Liens) and the Carve-Out.

(i) *Section 507(b) Claims.* The Prepetition Secured Parties are hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection

Claims, which, to the fullest extent permitted under the Bankruptcy Code, shall be junior in priority to the DIP Superpriority Claims, and the Carve-Out, but senior in 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 shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Proceeds). Except to the extent expressly set forth in this Interim Order, the Final Order or the DIP Documents, 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) have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(b) *Additional Adequate Protection.*

(i) *Budget and Financial Covenants*. Upon indefeasible payment in full of all DIP Obligations and all other obligations under the DIP Facility, (i) the Approved Budget shall continue to be updated in accordance with the terms and conditions of the DIP Credit Agreement and (ii) the Prepetition Secured Parties are hereby entitled to performance of those certain financial and other covenants set forth in Article VI of the DIP Credit Agreement.

(c) *Prepetition Secured Parties Fees and Expenses.* As further Adequate Protection, the Debtors shall provide the Prepetition Secured Parties without duplication of fees paid for the benefit of the DIP Secured Parties, cash payments of all reasonable and documented prepetition and postpetition fees and expenses, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of primary, special, conflicts and local counsel (in each applicable jurisdiction) and financial advisors to (i) One Madison Group – Plenty, LLC and its affiliates, including without limitation, Davis Polk & Wardwell LLP, Porter Hedges LLP and Moses & Singer LLP and (ii) SVF II Pacific (DE) LLC and its affiliates, including without limitation Sullivan & Cromwell LLP, Porter Hedges LLP and Moses & Singer LLP (the "Adequate Protection Fees and Expenses") (and such counsel and advisors, the "Prepetition Secured Parties Advisors"), subject to the review procedures set forth in paragraph 17 of this Interim Order.

(d) *Adequate Protection Information Rights*. The Debtors shall promptly provide the Prepetition Secured Parties and the Prepetition Secured Parties Advisors (and subject to applicable confidentiality restrictions contained in any of the Prepetition Senior Secured Note Documents), with all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the other DIP Secured Parties under the DIP Documents, including without limitation the reporting required under Article V of the DIP Credit Agreement.

(e) *Maintenance of Collateral*. The Debtors shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Senior Secured Note Documents and the DIP Documents.

14. *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 the Prepetition Secured Parties may request further or different adequate protection and the Debtors or any other party in interest may contest any such request.

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

(a) Without in any way limiting the automatic validity and effective perfection of the DIP Liens granted pursuant to paragraph 6 hereof and the Adequate Protection Liens granted pursuant to paragraph 14 hereof, the DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors and the Prepetition Secured Parties (as applicable), 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, including as may be reasonably required or deemed appropriate by the DIP Agent acting at the direction of the Required Lenders, or take possession of or control over cash or securities, or to amend or modify security documents, or enter into, amend or modify intercreditor agreements, or to subordinate existing liens and any other similar action or action in connection therewith or take any other action in order to document, validate and perfect the liens and security interests granted to them hereunder the ("Perfection Actions"). Whether or not the DIP Agent, on behalf of the DIP Secured Parties and acting at the direction of the Required Lenders, or the Prepetition Secured Parties shall take such Perfection Actions, the liens and security interests granted hereunder 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 DIP Agent, acting at the direction of the Required Lenders, the Prepetition Secured Parties and the Debtors, without any further consent of any party, and at the sole cost of the Debtors as set forth herein, are authorized and directed, and such direction is hereby deemed to constitute required direction under the applicable DIP Documents or Prepetition Senior Secured Note Documents, to take, execute, deliver and file such actions, instruments and agreements (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 in all jurisdictions required under the DIP Credit Agreement, including all local law documentation therefor determined to be reasonably necessary by the DIP Agent, acting at the direction of the Required Lenders; *provided*, however, that no action need be taken in a foreign jurisdiction that would jeopardize the validity and enforceability of the Prepetition Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to Bankruptcy Code sections 506(c), 510, 549, or 550. No lien or interest avoided and preserved for the benefit of any Debtor's estate pursuant to Bankruptcy Code section 551 shall be made *pari passu* with or senior to the Adequate Protection Liens.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent, acting at the direction of the Required Lenders, or the Prepetition Secured Parties, 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 a certified copy of this Interim Order for filing and/or recording, as applicable. The Automatic Stay shall be modified to the extent necessary to permit the DIP Agent and the Prepetition Secured Parties to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

16. *Preservation of Rights Granted Under this Interim Order.*

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Interim Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Agent and the other DIP Secured Parties or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under 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 Debtors' 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 Debtors; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Debtors.

(b) Upon the occurrence of (i) any Event of Default or (ii) any violation of the terms of this Interim Order, where applicable, default interest shall accrue and be paid as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of these Chapter 11 Cases to cases under chapter 7: (A) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, 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 paid in full (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, including without limitation, any appointed trustee); (B) the other rights granted by this Interim Order, including with respect to the Carve-Out, shall not be affected and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter vacated, reversed or modified on appeal, such vacatur, reversal or modification 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 or the Prepetition Agent, as applicable, of the effective date of such reversal, modification, vacatur or stay, (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens or the Carve-Out. Notwithstanding any reversal, modification or vacatur on appeal of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred by the Debtors and granted to any of 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 or the Prepetition Agent, as applicable, of the effective date of such reversal, modification or vacatur on appeal, 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, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code, this Interim Order and the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate

Protection Obligations and the 507(b) Claims and all other rights and remedies of the DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents and the Carve-Out shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases or terminating the joint administration of the Chapter 11 Cases or by any other act or omission; (ii) the entry of an order 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); (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Chapter 11 Cases, in any Successor Cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the other 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 DIP Commitments have been terminated (and in the case of rights and remedies of the Prepetition Secured Parties, shall remain in full force and effect thereafter, subject to the terms of this Interim Order), and the Carve-Out shall continue in full force and effect.

17. *Payment of Fees and Expenses*. The Debtors are authorized to and shall pay the DIP Fees and Expenses and the Adequate Protection Fees and Expenses whether or not included

in the Approved Budget. Subject to the review procedures set forth in this paragraph 17, payment of all DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Each of the professionals for the DIP Agent, the other DIP Secured Parties, and the Prepetition Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however, any time that such professionals seek payment of fees and expenses from the Debtors prior to the confirmation of a chapter 11 plan, each professional shall provide summary copies of its invoices (which shall not be required to contain time entries or details which may be redacted, summarized or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under applicable law) to the Debtors, the U.S. Trustee, and counsel to any statutory committee appointed in the Chapter 11 Cases (together, the "Review Parties"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after the receipt of any such invoice by the Review Parties (the "Review Period"). If no written objection is received by 12:00 p.m. prevailing Central Time on the end date of the Review Period, the Debtors shall promptly pay such invoices within three (3) business days. If an objection to a professional's invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice (without further order of, or application to, the Court or notice to any other party) and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the closing date of the DIP Financing, the DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred on or prior to such date without the need for any professional engaged by, or on behalf of, any of the DIP Secured Parties or the Prepetition Secured Parties to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney or advisor to any DIP Secured Parties or Prepetition Secured Parties shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (i) any DIP Secured Parties in connection with or with respect to the DIP Facility and (ii) any Prepetition Secured Parties in connection with or with respect to these matters, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person. The Automatic Stay shall be modified to the extent necessary to permit the Debtors to pay all amounts, as applicable, referenced in this paragraph 17.

18. *Effect of Stipulations on Third Parties*. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases 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 with requisite standing (in each case, to

the extent requisite standing is obtained pursuant to an order of this Court entered prior to the expiration of the Challenge Period and subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in this paragraph) by no later than (i)(x) as to the Creditors' Committee only, 60 calendar days from the formation of the Creditors' Committee, (y) if the Chapter 11 Cases are converted to chapter 7 and a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (1) 60 calendar days after entry of this Interim Order, or (2) the date that is 30 calendar days after the appointment of such chapter 7 or chapter 11 trustee, and (z) as for all other parties in interest, 60 calendar days after entry of this Interim Order; (ii) any such later date as has been agreed to in writing by the Debtors, the DIP Agent (acting at the direction of the Required Lenders) and Prepetition Secured Parties; or (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(iii), the "Challenge Period"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Obligations or the Prepetition Liens, or (B) 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, the "Challenges") 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 the 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 the Prepetition Senior Secured Note Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided*, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred, including any amended or additional claims that may or could have been asserted thereafter through an amended complaint under Fed. R. Civ. P. 15 or otherwise. 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: (1) the Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding on all parties in interest; (2) the obligations of the Debtors under the Prepetition Senior Secured Note Documents, including the Prepetition Obligations, shall constitute allowed claims not subject to defense, avoidance, reduction, setoff, claim, counterclaim, cross-claim recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, recoupment, offset, avoidance, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, claim, counterclaim, cross-claim recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, recoupment, offset, avoidance, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity; and (4) the Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by any statutory or 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, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any statutory or 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, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Senior Secured Note Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely 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 the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases 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 any statutory or 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 Senior Secured Note Documents, the Prepetition Obligations or the Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.

19. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor party (a) in connection with the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in their respective capacity as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Obligations and/or the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Obligations and/or the liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under this Interim Order, the Final Order, the DIP Documents or the Prepetition Senior Secured Note Documents in respect of the Prepetition Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP

Loans and/or DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate (but not to prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties up to an aggregate cap of no more than $50,000, (b) to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties, the DIP Agent's or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Senior Secured Note Documents or this Interim Order; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the other DIP Secured Parties under this Interim Order, the Prepetition Senior Secured Note Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and 507(b) Claims granted to the Prepetition Secured Parties; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved or authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under this Interim Order or permitted under the DIP Documents (including the Approved Budget), in each case unless all DIP Obligations, Prepetition Obligations, Adequate Protection Obligations, and claims granted to the DIP Secured Parties and Prepetition Secured Parties under this Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Secured Parties.

20. *Indemnification*. The Prepetition Secured Parties and the DIP Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the DIP Secured Parties shall be and hereby are indemnified (as applicable) as provided in the DIP Documents, as applicable, including, without limitation, Section [9.04] of the DIP Credit Agreement. The Debtors agree that no exception or defense in contract, law, or equity exists as of the date of this Interim Order to any obligation set forth, as the case may be, in this paragraph 21 or in the DIP Documents to indemnify and/or hold harmless the DIP Secured Parties, and any such defenses that may be in existence as of the date of this Interim Order are hereby waived.

21. *Interim Order Governs*. In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents (including, but not limited to, with respect to the Adequate Protection Obligations), the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to any authorization contained in any other order entered by this 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.

22. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be, subject to the challenge rights in paragraph 18 hereof, binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties, any statutory or 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 other DIP Secured Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided* that the DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

23. *Limitation on Liability*. Nothing in this Interim Order, the DIP Documents, the Prepetition Senior Secured Note Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Secured Parties and Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or Prepetition Collateral, (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 or Prepetition Collateral shall be borne by the Debtors. By virtue of making any loan or other extension of credit under the DIP Documents or permitting the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents or Prepetition Senior Secured Note Documents, none of the DIP Secured Parties or the Prepetition Secured Parties shall (a) have any liability to any third party or 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; or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" or "managing agent" with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Agent, the other DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

24. *Proof of Claim.* The Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or any Successor Case in order to assert claims for payment of the Prepetition Obligations arising under the Prepetition Senior Secured Note Documents, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts under the Prepetition Senior Secured Note Documents. The statements of claim in respect of such

indebtedness set forth in this Interim Order, together with any evidence accompanying the DIP Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. The DIP Agent and the other DIP Secured Parties shall similarly not be required to file proofs of claim with respect to their DIP Obligations under the DIP Documents, and the evidence presented with the DIP Motion and the record established at the Interim Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status, and priority. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce any unnecessary expense to the Debtors' estates, the Prepetition Agent is authorized (but not directed), to file in the Debtors' lead Chapter 11 Case (Case No. 25-90105 (CML)), a master proof of claim on behalf of their respective Prepetition Secured Parties, as applicable, on account of any and all of their respective claims arising under their Prepetition Senior Secured Note Documents and hereunder (as applicable) (each, a "Master Proof of Claim") against each of the applicable Debtors. Upon the filing of any such Master Proof of Claim, each Prepetition Agent shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims of any type or nature whatsoever with respect to the Prepetition Senior Secured Note Documents, and the claim of each applicable Prepetition Secured Party (and each of its 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 of the applicable Debtors. The Master Proofs of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by the Debtors to the applicable Prepetition Secured Parties. Any proof of claim filed by any Prepetition Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to the Prepetition Secured Parties with respect to the Prepetition Obligations or any claims arising under the Prepetition Senior Secured Note Documents.

25. *Insurance*. To the extent that the Prepetition Agent is listed as loss payee under the Debtors' insurance policies, the DIP Agent is also deemed to be the loss payee under the insurance policies (in any such case with the same priority of liens and claims thereunder relative to the priority of the Prepetition Liens and Adequate Protection Liens as set forth herein), and shall act in that capacity and distribute any proceeds recovered or received in respect of the insurance policies, to the indefeasible payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Commitments, and to the payment of the applicable Prepetition Obligations.

26. *Credit Bidding*. (a) the DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, in any sale of the DIP Collateral up to the full amount of the DIP Obligations and (b) the Prepetition Agent shall have the right to credit bid in any sale of the Prepetition Collateral up to the full amount of the Prepetition Obligations, in each case as and to the extent provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through sections 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, in each case unless the Court for cause orders otherwise.

27. *Effectiveness*. This Interim Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d),

7062, or 9014 of the Bankruptcy Rules or any Local Rules, 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.

28. *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.

29. *Payments Held in Trust*. Except as expressly permitted in this Interim Order or the DIP Documents and except with respect to the Debtors, 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 and termination of all DIP Commitments, such person or entity (other than a holder of a Prepetition Permitted Prior Lien) shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent and the other DIP Secured Parties and shall immediately turn over the proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

30. *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 DIP Motion.

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

32. *Necessary Action*. The Debtors, the DIP Secured Parties and the Prepetition Secured Parties are each authorized to take all actions as are necessary or appropriate to implement the terms of this Interim Order. In addition, the Automatic Stay is modified to permit affiliates of

the Debtors who are not debtors in the Chapter 11 Cases to take all actions as are necessary or appropriate to implement the terms of this Interim Order.

33. *Retention of Jurisdiction*. The Court retains jurisdiction to 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.

34. *Final Hearing*. A final hearing to consider the relief requested in the Motion shall be held on [•], 2025 at [•] [p.m./a.m.] (prevailing Central Time) and any objections or responses to the entry of the proposed Final Order shall be filed on or prior to [•], 2025 at [•] [p.m./a.m.] (prevailing Central Time) (the "DIP Objection Deadline").

35. *Objections*. Any party in interest objecting to the relief sought at the Final Hearing shall file written objections by no later than the DIP Objection Deadline and otherwise in conformity with the Court's order establishing notice and case management procedures, if any.

36. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing and the objection deadline) to the parties having been given notice of the Interim Hearing; to any party that has filed a request for notices with this Court; to any Creditors' Committee (if and when it is appointed); all parties known to the Debtors to be asserting liens against or security interest in, any of the DIP Collateral or Prepetition Collateral; the Internal Revenue Service; all state taxing authorities in the states in which the Debtors have any tax liabilities; any federal or state regulatory authorities governing the Debtors' industry; the U.S. Attorney's Office; and Texas Attorney General.

Dated: ___________________, 2025
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Credit Agreement

SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION LOAN AGREEMENT

dated as of March [•], 2025

among

PLENTY UNLIMITED INC.,
and
PLENTY UNLIMITED TEXAS LLC,
as Borrowers
and Debtors and Debtors-in-Possession under chapter 11 of the Bankruptcy Code,

THE ENTITIES FROM TIME TO TIME PARTY HERETO,
as Lenders,
and

GLAS USA LLC,
as Administrative Agent

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SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION LOAN AGREEMENT

This **SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION LOAN AGREEMENT**, dated as of March [•], 2025 (this "***Agreement***"), is entered into by and among **PLENTY UNLIMITED INC.**, a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, **PLENTY UNLIMITED TEXAS LLC**, a Texas limited liability company and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (together with the Lead Borrower, each a "***Borrower***" and collectively, the "***Borrowers***"), the Lenders party hereto from time to time and **GLAS USA LLC**, as Administrative Agent and as Collateral Agent.

RECITALS

WHEREAS, on March [•], 2025 (the "***Petition Date***"), the Borrowers and each Loan Party (each, a "***Debtor***" and collectively, the "***Debtors***") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each such case, a "***Chapter 11 Case***" and collectively, the "***Chapter 11 Cases***") and have continued in the possession of their assets and the management of their business pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrowers have requested the Lenders provide a superpriority senior secured debtor-in-possession term loan credit facility in an aggregate principal amount of up to $21,700,000 (the "***DIP Facility***"), consisting of (i) Initial Term Loans in an aggregate principal amount on the Closing Date of $12,000,000 and (ii) Delayed Draw Term Loan Commitments in an aggregate principal amount on the Closing Date of $8,700,000, with all of the Borrowers' obligations under the DIP Facility to be guaranteed by each Guarantor, and the Lenders are willing to extend such credit to the Borrowers on the terms and subject to the conditions set forth herein;

WHEREAS, the priority of the DIP Facility with respect to the Collateral granted as security for the payment and performance of the Obligations shall be as set forth in the Interim Order and the Final Order, as applicable, in each case, upon entry thereof by the Bankruptcy Court, and in the Collateral Documents;

WHEREAS, all claims and the Liens granted under the Orders and the Credit Documents to the Lenders in respect of the DIP Facility shall be subject and subordinate to the Carve-Out;

WHEREAS, the Borrowers and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions under this Agreement; and

WHEREAS, the Lenders are willing to extend credit to the Borrowers on and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE I
CERTAIN DEFINED TERMS; CERTAIN RULES OF CONSTRUCTION

SECTION 1.01 CERTAIN DEFINED TERMS.

As used herein:

"***363 Sale***" has the meaning assigned to such term in the Milestones.

"***Account Debtor***" means any Person who is or may become obligated with respect to, or on account of, an Account, Chattel Paper or General Intangible (including a payment intangible (as that term is defined in the UCC)).

"***Acquisition***" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the voting Equity Interests or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"***Administrative Agent***" means, at any time, the administrative agent for the Lending Parties under each of the Credit Documents (which, initially, shall be GLAS USA LLC) and thereafter shall include any successor appointed in accordance with **Section 8.06**.

"***Administrative Agent Fee Letter***" means that certain Fee Letter, dated as of the Closing Date, by and between the Administrative Agent and Borrowers.

"***Administrative Agent's Office***" means Administrative Agent's address as set forth on **Schedule 9.02**, or such other address as Administrative Agent may from time to time notify the Lead Borrower and each other Lending Party.

"***Administrative Detail Form***" means an administrative detail form supplied by, or otherwise acceptable to, Administrative Agent.

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

"***Agent Required Approval Item***" has the meaning given to such term in **Section 8.03(b)**.

"***Agreement***" means this Loan Agreement, as amended, restated, replaced, supplemented or otherwise modified from time to time.

"***Anti-Corruption Laws***" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"***Anti-Money Laundering Laws***" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"***Anti-Terrorism Law***" means, collectively: (a) the Patriot Act; (b) the Trading With the Enemy Act (50 U.S.C. § 1 *et seq*.); (c) the FCPA, (d) any similar Law enacted in the United States following the date of this Agreement, and (e) any other applicable terrorism laws, rules, regulations, and orders.

"***Approval Direction***" has the meaning given to such term in **Section 8.03(b)**.

"***Approved Bankruptcy Court Orders***" shall mean, collectively:

(a) each of the Orders, as such order is amended and in effect from time to time in accordance with this Agreement;

(b) the Disclosure Statement Order;

(c) the Bidding Procedures Order;

(d) the Confirmation Order;

(e) the First Day Pleadings;

(f) the Sale Order;

(g) the Cash Management Order; and

(h) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of any Lender, (ii) the Credit Documents (including the Loan Parties' obligations thereunder), (iii) the Collateral, any Liens thereon or any Superpriority Claims (including any sale or other disposition of Collateral or the priority of any such Liens or Superpriority Claims), (iv) use of Cash Collateral in the Chapter 11 Cases, (v) any debtor-in-possession financing of the Debtors, or (vi) adequate protection or otherwise relating to any Prepetition Note Obligations, in the case of each of the foregoing clauses (i) through (vi), (A) solely with respect to those provisions thereof that affect the rights and duties of the Lenders, in form and substance satisfactory to the Required Lenders, (B) that has not been vacated, reversed or stayed and (C) that has not been amended or modified in a manner adverse to the rights of the Lenders except solely with respect to those provisions thereof that affect the rights and duties of the Lenders, the consent of the Required Lenders.

"***Approved Budget***" shall mean, initially, the Initial Budget, and, thereafter, the most recent Updated Budget accepted (or deemed accepted) by the Lenders in accordance with **Section 5.21.**

"***Approved Disclosure Statement***" means a comprehensive disclosure statement with respect to an Approved Plan, in form and substance acceptable to the Required Lenders.

"***Approved 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 activities, which Person is administered or managed by (a) a Lending Party, (b) an Affiliate of a Lending Party or (c) an entity, or an Affiliate of an entity, that administers or manages a Lending Party; provided, that an "***Approved Fund***" shall not include any Loan Party or any of its Affiliates.

"***Approved Plan***" means a joint plan of reorganization filed by the Debtors under chapter 11 of the Bankruptcy Code that is in form and substance acceptable to the Required Lenders or otherwise satisfies all Obligations and Prepetition Note Obligations in full in cash on the effective date.

"***Approved Sale***" means a sale of all or substantially all of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code that repays the Obligations in full in cash on the closing date of such sale or is otherwise acceptable to the Required Lenders.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lending Party and an Eligible Assignee (with the consent of any party whose consent is required by **Section 9.06(b)**), and accepted by Administrative Agent, substantially in the form of **Exhibit B**, or such other form as agreed by Administrative Agent.

"***Attributable Debt***" means, on any date of determination: (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"***Authorized Financial Officer***" means, with respect to each Loan Party, the chief executive officer, president, chief financial officer, or any other senior officer in the finance department of such Loan Party. Any document delivered hereunder that is signed by an Authorized Financial Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Authorized Financial Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Avoidance Action***" has the meaning assigned to such term in the Interim Order or the Final Order, as applicable.

"***Avoidance Proceeds***" has the meaning assigned to such term in the Interim Order or the Final Order, as applicable.

"***Bankruptcy Code***" means Title 11 of the United States Code (11 USC § 101 *et seq*.), as in effect from time to time.

"***Bankruptcy Court***" shall mean the United States Bankruptcy Court for the Southern District of Texas or any other court having jurisdiction over the Chapter 11 Cases from time to time.

"***Bankruptcy Law***" means each of (i) the Bankruptcy Code, (ii) any domestic or foreign law relating to liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, administration, insolvency, reorganization, debt adjustment, receivership or similar debtor relief laws from time to time in effect and affecting the rights of creditors generally (including without limitation any plan of arrangement provisions of applicable corporation statutes), and (iii) any order made by a court of competent jurisdiction in respect of any of the foregoing.

"***Bidding Procedures Order***" means an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, approving bidding procedures for an Approved Sale.

"***Board of Directors***" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"***Books and Records***" means, as to any Person, all of such Person's books and records including ledgers, federal and state Tax returns, records regarding such Person's assets or liabilities, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"***Borrower"*** and ***"Borrowers***" have the respective meanings given to such terms in the introductory paragraph hereof.

"***Borrowing***" means the incurrence by the Borrowers on a single date of Term Loans.

"***Borrowing Request***" means a written request for funding of any Loan, substantially in the form of **Exhibit C**.

"***Budget***" shall mean each operating budget of the Debtors delivered pursuant to **Section 5.21(a)** setting forth, among other things, projected operating and non-operating receipts, disbursements, professional fees, net cash flow and Liquidity on a weekly basis for the period commencing on the Saturday immediately preceding the applicable Updated Budget Delivery Date through and including the Budget Termination Date, in each case, prepared by the Lead Borrower's management and assuming the Debtors remain debtors and debtors-in-possession in the Chapter 11 Cases through the relevant Budget Termination Date, in form and level of detail substantially consistent with the Initial Budget.

"***Budget Termination Date"*** means, with respect to any Budget (a) delivered prior to April 17, 2025, May 16, 2025 and (b) delivered on any date on or after April 17, 2025, the last day of the 8-week period ending after such date (including the calendar week during which such date occurs).

"***Budget Variance Report***" shall mean, for any Budget Variance Test Period, a weekly variance report prepared by the Lead Borrower's management, comparing for such Budget Variance Test Period the actual results against anticipated results under the Approved Budget, on a line-item basis and in the same level of detail set forth in the applicable Approved Budget, together with a written explanation for all material variances of for any given testing period; <u>provided</u> that, to the extent the applicable Budget Variance Test Period is covered by more than one Approved Budget, the applicable weeks from each applicable Approved Budget shall be utilized in calculating the comparisons for purposes of the Budget Variance Report.

"***Budget Variance Test Date***" shall mean the Friday of every week (commencing with the Friday of the second full calendar week occurring after the Petition Date) or, to the extent such Friday is not a Business Day, the next Business Day thereafter.

"***Budget Variance Test Period***" shall mean, with respect to any Budget Variance Test Date, the period set forth opposite such Budget Variance Test Date in the below table:

Budget Variance Test Date	**Budget Variance Test Period**
The first Budget Variance Test Date after the Petition Date	The period commencing on the Petition Date and ending on the Friday (or, to the extent such Friday is not a Business Day, the next Business Day thereafter) of the second full calendar week thereafter (the "**Initial Two Week Budget Variance Testing Period**")
The second Budget Variance Test Date after the Petition Date	The period commencing on the Petition Date and ending on the Friday (or, to the extent such Friday is not a Business Day, the next Business Day thereafter) of the third full calendar week thereafter (the "**Initial Three Week Budget Variance Testing Period**")
The third Budget Variance Test Date after the Petition Date	The period commencing on the Petition Date and ending on the Friday (or, to the extent such Friday is not a Business Day, the next Business Day thereafter) of the fourth full calendar week thereafter (the "**Initial Four Week Budget Variance Testing Period**").
Each Budget Variance Test Date thereafter	The four-week period ending on the next Friday (or, to the extent such Friday is not a Business Day, the next Business Day thereafter) after the last immediately preceding Budget Variance Test Period.

"***Business Day***" means any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close and shall also exclude any day that is not a U.S. Government Securities Business Day.

"***Capital Expenditures***" means, with respect to any Person, all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Leases that is capitalized on the balance sheet of such Person including in connection with a sale leaseback transaction) by such Person for the acquisition or leasing of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person. For purposes of this definition: (a) the amount of any Capital Expenditure in connection with the purchase of any of equipment that is purchased simultaneously with the trade-in of existing equipment owned by such Person thereof or with insurance proceeds shall be the result of (i) the gross amount of the purchase price, *minus* (ii) the credit granted by the seller of such equipment for such equipment being traded in at such time, or the amount of such proceeds, as the case may be; and (b) an acquisition to the extent made with the proceeds of a Disposition in accordance with **Section 6.05(c)** shall not constitute a "***Capital Expenditure***".

"***Capital Lease***" means any lease which, in accordance with GAAP, is required to be capitalized for financial reporting purposes; provided that notwithstanding the foregoing, any obligations of a Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "***ASU***") shall continue to be accounted for as operating leases for purposes of all financial definitions, calculations and covenants 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 accordance with GAAP.

"***Capitalized Lease Obligation***" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"***Carve-Out***" shall have the meaning given to such term in the Interim Order or the Final Order, as applicable.

"***Cash Collateral***" shall have the meaning given to such term in the Interim Order or the Final Order, as applicable.

"***Cash Equivalents***" means any of the following types of property, to the extent owned by the Lead Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody's;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody's and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody's nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers' acceptances of, or time deposits with any Lender or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least $250,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody's; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the forgoing Investments described in clauses (a) through (e) above.

"***Cash Management Order***" shall mean an interim or final order of the Bankruptcy Court entered in the Chapter 11 Cases that authorizes the Debtors to maintain their existing cash management and treasury arrangements, as the same may be amended, supplemented, or modified from time to time after entry thereof subject to the consent of the Required Lenders.

"***CERCLA***" has the meaning given to such term in **Section 8.10(e)**.

"***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, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything to the contrary contained herein: (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or the implementation thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States 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 or implemented.

"***Change of Control***" means that:

(a) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 25% or more of the Equity Interests of the Lead Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of the Lead Borrower;

(b) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Lead Borrower and its Subsidiaries taken as a whole to any Person (including any "person" (as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended)), other than Permitted Holders;

(c) The occurrence of a change in the composition of the Board of Directors of the Lead Borrower such that a majority of the members of such Board of Directors are not Continuing Directors;

(d) The Lead Borrower fails to own and control, beneficially and of records, directly or indirectly, 100% of the issued and outstanding Equity Interests of each of its Subsidiaries; or

(e) any "change of control" or similar event under any Material Debt (other than the Prepetition Note Obligations or any Debt that is subject to the automatic stay applicable under section 362 of the Bankruptcy Code) of any Loan Party or the Organizational Documents of any Loan Party occurs.

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

"***Chapter 11 Plan***" shall mean a chapter 11 plan in any or all of the Chapter 11 Cases.

"***Chattel Paper***" means, as to any Person, all chattel paper (as that term is defined in the UCC), including electronic chattel paper (as that term is defined in the UCC), now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party).

"***Claims***" means, collectively, any claim or cause of action based upon or arising out of this Agreement, the other Credit Documents or any of the transactions contemplated hereby or thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

"***Closing Date***" means March [•], 2025.

"***Code***" means the Internal Revenue Code of 1986, as amended.

"***Collateral***" shall have the meaning given to the term "DIP Collateral" in the Interim Order (and, when applicable, the Final Order) and words of similar intent, and in any of the Collateral Documents, and shall include all present and after acquired assets and property, whether real, personal, tangible, intangible or mixed of the Loan Parties, wherever located, on which Liens are or are purported to be granted pursuant to the Orders or any Collateral Document to secure the payment and performance of the Obligations; provided that in no event shall the Collateral include, and there shall be no Liens upon, the Excluded Property.

"***Collateral Accounts***" means all commodity accounts, deposit accounts and securities accounts (in each case, as defined in the UCC) of any Loan Party.

"***Collateral Agent***" means, at any time, the administrative agent for the Lending Parties under each of the Credit Documents (which, initially, shall be GLAS USA LLC) and thereafter shall include any successor appointed in accordance with **Section 8.06**.

"***Collateral and Guarantee Agreement***" means a Collateral and Guarantee Agreement, dated as of the date of this Agreement, in form and substance satisfactory to Administrative Agent, executed and delivered by each of the Loan Parties and Collateral Agent to Administrative Agent.

"***Collateral Documents***" means, collectively: (a) this Agreement; (b) each Control Agreement entered into in connection with this Agreement; (c) each Deed of Trust; (d) the Collateral and Guarantee Agreement; (e) each Copyright Security Agreement; (f) each Patent Security Agreement; (g) each Trademark Security Agreement; (h) any guaranty, guaranty and security agreement or other document similar to the documents referred to in clauses (a) through (g) of this definition executed on or after the Closing Date pursuant to the terms hereof or otherwise in connection with the transactions contemplated hereby; (i) all financing statements (or comparable documents now or hereafter filed in accordance with the Uniform Commercial Code or other comparable Law) against the Borrowers or any other Loan Party or any other Credit Document as debtor in favor of Administrative Agent, for the benefit of itself and each other Lending Party (or any of the foregoing), as secured party; and (j) the Orders.

"***Commitments***" or "***Term Loan Commitments***" means, individually or collectively, as the context may require, the Initial Term Loan Commitments and/or the Delayed Draw Term Loan Commitments, as applicable.

"***Compliance Certificate***" means a certificate substantially in the form of **Exhibit A**.

"***Confirmation Order***" means an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, confirming an Approved Plan.

"***Continuing Director***" means (a) any member of the Board of Directors who was a director (or comparable manager) of the Lead Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors.

"***Contractual Obligation***" means, as to any Person, any document or other agreement or undertaking to which such Person is a party or by which it or any of its property is bound.

"***Control***" means (other than when used in the terms "***Change of Control***" and "***Control Agreement***") 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. The terms "***Controlling***" and "***Controlled***" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, the power to vote more than 2.75% or more of the securities having ordinary voting power for the election of directors, managing general partners, managers or the equivalent or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"***Control Agreement***" means any agreement entered into among a depository institution, commodities intermediary or securities intermediary at which a Loan Party maintains a Collateral Account (which is not an Excluded Account), such Loan Party and Administrative Agent, pursuant to which Administrative Agent obtains control (within the meaning of the UCC) over such Collateral Account, in form and substance reasonably satisfactory to Administrative Agent.

"***Copyright License***" means, as to any Person, all licenses and other similar rights now provided or hereafter provided to such Person (or in which such Person has rights or the power to transfer rights to a secured party) with respect to any Copyright of another Person.

"***Copyright Security Agreement***" has the meaning given to such term in the Collateral and Guarantee Agreement.

"***Copyrights***" means, as to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all copyrights in any original work of authorship fixed in any tangible medium of expression, now known or later developed, all registrations and applications for registration of any such copyrights in the United States or any other country, including registrations, recordings and applications, and supplemental registrations, recordings, and applications in the United States Copyright Office; and (b) all proceeds of the foregoing, including license royalties and proceeds of infringement suits, the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof.

"***Covered Entity***" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"***Covered Party***" has the meaning given to such term in **Section 9.16**.

"***Credit Documents***" means, collectively, this Agreement, the Administrative Agent Fee Letter, each Note, each Guaranty, each Collateral Document, the Intercompany Subordination Agreement, and all other present or future documents entered into by any Loan Party for the benefit of Lending Parties (or any of them), in connection with this Agreement.

"***Credit Outstandings***" means, as of any date of determination, the then Outstanding Amount of all Loans and the Premiums (if any, that is due and payable as of such date of determination) owing with respect thereto.

"***Debt***" means, as to any Person as of any date of determination, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial letters of credit), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (c) any net obligations under swap or hedge contracts to which such Person is a party (which amount thereof shall be calculated based on the net amount that would be payable by such Person if such swap or hedge contracts were terminated on the date of determination); (d) all obligations of such Person to pay the deferred purchase price of property or services when due and payable (other than trade accounts payable in the ordinary course of business that are not past due) including Earn-Out Obligations; (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided the amount of any such indebtedness which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (i) if applicable, the limited amount of such obligations, and (ii) if applicable, the fair market value of such assets securing such obligation; (f) the amount of Attributable Debt in respect of all Capitalized Lease Obligations and Synthetic Lease Obligations of such Person, (g) any other Off-Balance Sheet Liability of such Person, (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Equity Interest, valued, in the case of a Disqualified Equity Interest that is a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and (i) all Guarantees of such Person in respect of any Debt referred to in the immediately preceding clauses (a) through (h). For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

"***Debtor***" or "***Debtors***" shall have the meaning given to such term in the recitals to this Agreement.

"***Deed of Trust***" means each mortgage, leasehold mortgage or deed of trust or other similar document executed and delivered to Administrative Agent pursuant to the terms hereof or otherwise in connection herewith by Borrowers, any Guarantor or any other Loan Party, as security for the Obligations.

"***Default***" means any Event of Default or any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"***Default Rate***" shall have the meaning assigned to such term in **Section 2.02(b)**.

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

"***Delayed Draw Term Lender***" shall mean any Lender having a Delayed Draw Term Loan Commitment and/or holding outstanding Delayed Draw Term Loans.

"***Delayed Draw Term Loan Borrowing Date***" shall mean any date on which the conditions set forth in **Section 3.02** of this Agreement are satisfied or waived by the Delayed Draw Term Lenders and a Borrowing of Delayed Draw Term Loans is made.

"***Delayed Draw Term Loan Commitments***" shall mean the commitment of each Delayed Draw Term Lender to make Delayed Draw Term Loans in an aggregate amount not to exceed the amount set forth opposite such Delayed Draw Term Lender's name under the heading "Delayed Draw Term Loan

Commitments" on the Term Loan and Commitments Schedule, as the same may be reduced (including, without limitation, pursuant to **Section 2.11(b)**) or increased from time to time pursuant to the terms hereof and/or assignments by or to such Lender pursuant to **Section 9.06**. The aggregate amount of the Delayed Draw Term Loan Commitments on the Closing Date is $8,700,000.

"***Delayed Draw Term Loans***" shall have the meaning given to such term in **Section 2.01(b)**.

"***Deposit Account***" means any deposit account (as that term is defined in the UCC).

"***DIP Facility***" shall have the meaning given to such term in the recitals to this Agreement.

"***Disclosure Statement Order***" means any order, whether on a conditional or final basis, approving an Approved Disclosure Statement.

"***Disposition***" means the sale, assignment, transfer, conveyance, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any transfer of assets by way of division, and any sale, assignment, transfer, conveyance or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. The term "***Dispose***" has a meaning correlative thereto.

"***Disqualified Equity Interest***" means any Equity Interest of any Person that, by its terms (or by the terms of any Equity Interest or other security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event or circumstance, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires or mandates payments or distributions in cash, on or prior to the date that is one year after the Maturity Date.

"***Documents***" means, as to any Person, all documents (as that term is defined in the UCC) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including all bills of lading, dock warrants, dock receipts, warehouse receipts, and other documents of title, whether negotiable or non-negotiable.

"***Dollar***" and "***$***" mean lawful money of the United States.

"***Driscoll Agreement***" means that certain Master Grower Services Agreement dated October 4, 2024, by and between Driscoll's, Inc., a California corporation, and PF2VA LLC, a Delaware limited liability company, together with all Plant Orders (as defined therein) delivered in connection therewith, in each case as amended, restated, amended and restated, supplemented or otherwise modified prior to the Closing Date.

"***Earn-Out Obligations***" means all obligations of the Loan Parties consisting of earn-outs or other payments related to the enhanced performance of an entity acquired in connection with an Acquisition, calculated in accordance with GAAP as the estimated amount thereof for the applicable Acquisition, which determination shall be made on the date the definitive documentation for the applicable Acquisition is entered into.

"***Electronic Platform***" means an electronic system for the delivery of information (including documents), such as Debt Domain, IntraLinks On Demand Workspaces™ or DXSyndicate™, that may or may not be provided or administered by Administrative Agent or an Affiliate thereof.

"***Eligible Assignee***" means any of the following: (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) consented to by Administrative Agent, the Required Lenders and, so long as no Event of Default is continuing as of the date of any assignment to such Person, the Lead Borrower (such consent not to be unreasonably withheld, conditioned or delayed).

"***Environmental Claims***" means all claims, however asserted, by any Governmental Authority or other Person alleging Environmental Liabilities.

"***Environmental Laws***" means all Laws relating to pollution, the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials or wastes, air emissions and discharges to waste or public systems.

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party, or any of their respective Subsidiaries directly or indirectly resulting from or based upon: (a) violation of any Environmental Law; (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials; (c) exposure to any Hazardous Materials; (d) the Release or threatened Release of any Hazardous Materials; or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Environmental Lien***" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

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

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"***ERISA Affiliate***" means any trade or business (whether or not incorporated) under common control with any Loan Party or any Subsidiary thereof within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"***ERISA Event***" means any of the following: (a) a Reportable Event with respect to a Pension Plan; (b) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or the receipt by any Loan Party or any ERISA Affiliate of notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under

Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (g) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; or (h) a failure by any Loan Party or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by any Loan Party or ERISA Affiliate to make any required contribution to a Multiemployer Plan.

"***Erroneous Payment***" has the meaning given to such term in **Section 9.17**.

"***Erroneous Payment Deficiency Assignment***" has the meaning given to such term in **Section 9.17**.

"***Erroneous Payment Impacted Loans***" has the meaning given to such term in **Section 9.17**.

"***Erroneous Payment Return Deficiency***" has the meaning given to such term in **Section 9.17**.

"***Event of Default***" has the meaning given to such term in **Section 7.01**.

"***Event of Loss***" means, with respect to any property of any Loan Party, any of the following: (a) any loss, destruction or damage of such property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property, or confiscation of such property or the requisition of the use of such property.

"***Exchange Act***" means the Securities Exchange Act of 1934.

"***Excluded Accounts***" has the meaning given to such term in the Collateral and Guarantee Agreement.

"***Excluded Property***" has the meaning given to such term in the Collateral and Guarantee Agreement.

"***Excluded Taxes***" means, with respect to Administrative Agent, any other Lending Party or any other recipient of any payment to be made by or on account of any obligation of any Borrower or any Loan Party hereunder or under any Credit Document: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case (i) imposed as a result of such Person being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) which are Other Connection Taxes; (b) in the case of a Lending Party, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Person with respect to an applicable interest in the Loans or its Commitments pursuant to applicable Law in effect on the date on which (i) such Person acquires such interest in the Loans or its Commitments (other than pursuant to an assignment request by any Loan Party) or (ii) such Person changes its Lending Office, except in each case to the extent that, pursuant to **Section 2.08**, amounts with respect to such Taxes were payable either to such Person's assignor immediately before such Person became a party hereto or to such Person immediately before it changed its Lending Office; (c) United States Taxes attributable to such Person's failure to comply with **Section 2.08(f)**; and (d) any United States federal withholding Taxes imposed under FATCA.

"***Exit Premium***" shall have the meaning given to such term in **Section 2.04(b)**.

"***Extraordinary Receipts***" means any cash payments received by any Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds relating to an Event of Loss or Disposition, as described in **Section 2.03(c)(i)** of this Agreement), consisting of (a) cash proceeds of judgments, cash proceeds of settlements, or other cash consideration of any kind received in connection with any cause of action or claim, (b) indemnity payments (other than (i) to the extent such indemnity payments are payable to a Person that is not a Loan Party or any of its Subsidiaries or (ii) the amounts so received are applied for the purpose of remedying the condition giving rise to the indemnity claim), (c) Tax refunds, (d) proceeds of business interruption insurance, and (e) any purchase price adjustment received in connection with any purchase agreement.

"***FATCA***" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"***Federal Funds Effective Rate***" shall mean, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal Funds Effective Rate; provided, that if the Federal Funds Effective Rate for any day is less than zero, the Federal Funds Effective Rate for such day will be deemed to be zero.

"***Final Order***" shall mean a final order of the Bankruptcy Court authorizing and approving on a final basis, among other things, the matters and provisions in the Interim Order, in substantially the form of the Interim Order, with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications solely with respect to those provisions thereof that affect the rights and duties of the Lenders, in form and substance satisfactory to the Required Lenders.

"***Final Order Entry Date***" shall mean the date on which the Final Order is entered by the Bankruptcy Court.

"***First Day Pleadings***" means the first-day pleadings that the Company determines are necessary or desirable to file with the Bankruptcy Court, which shall be in a form and substance acceptable to the Required Lenders.

"***Fiscal Quarter***" means, as of any date of determination with respect to the Lead Borrower or any Subsidiary thereof, each calendar quarter occurring during each Fiscal Year.

"***Fiscal Year***" means, as of any date of determination with respect to the Lead Borrower or any Subsidiary thereof, a calendar year which ends on December 31 of each calendar year.

"***Foreign Lender***" means any Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Code).

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

"***GAAP***" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"***Goodwill***" means, as to any Person, all goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs, operating and training manuals, customer lists, and distribution agreements now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party).

"***Governmental Authority***" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, including, but not limited to, state public utility or public service commissions, 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, without limitation, any supra-national bodies such as the European Union or the European Central Bank).

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

"***Guarantors***" means, collectively, the Borrowers and each other Person who, on or following the date hereof pursuant to the terms of any Credit Document, has executed or is required to execute a Guaranty of all or any portion of the Obligations or a third-party pledge agreement (or similar document), as pledgor or in a pledgor capacity, in favor of Administrative Agent or the Lending Parties with respect to all or any portion of the Obligations; provided, that, in any event, each Debtor shall be required to be a Guarantor.

"***Guaranty***" means any guaranty or third party pledge agreement (or similar document), in form and substance reasonably satisfactory to Administrative Agent, made by a Person for the benefit of the Lending Parties or Administrative Agent on behalf of the Lending Parties and includes the guaranty set forth in the Collateral and Guarantee Agreement.

"***Hazardous Materials***" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"***Hedge Agreement***" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

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

"***Indemnitees***" means, collectively, each Lending Party and each Related Party of any of the foregoing Persons.

"***Information***" has the meaning given to such term in **Section 9.07**.

"***Initial Budget***" shall mean the initial budget for the period commencing on or about the Petition Date and ending on or around May 16, 2025, in form and substance acceptable to the Required Lenders, a copy of which is attached as **Exhibit E**.

"***Initial Term Lender***" shall mean any Lender having an Initial Term Loan Commitment and/or holding outstanding Initial Term Loans.

"***Initial Term Loan Commitments***" shall mean the commitment of each Initial Term Lender to make Initial Term Loans hereunder on the Closing Date in an aggregate amount not to exceed the amount set forth opposite such Initial Term Lender's name under the heading "Initial Term Loan Commitments" on the Term Loan and Commitments Schedule, as the same may be reduced from time to time pursuant to the terms hereof and/or assignments by or to such Lender pursuant to **Section 9.06**. The aggregate amount of the Initial Term Loan Commitments on the Closing Date is $12,000,000.

"***Initial Term Loans***" shall have the meaning given to such term in **Section 2.01(a)**.

"***Intellectual Property***" means, as to any Person, all Copyrights, Licenses, Patents, Trademarks, inventions (whether or not patentable), designs, trade secrets, know-how, confidential information, domain names, data and database, customers lists, other proprietary rights, whether registered or not, now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located.

"***Intercompany Subordination Agreement***" means an intercompany subordination agreement, dated as of the date of this Agreement, executed and delivered by each Loan Party and Administrative Agent, the form and substance of which is satisfactory to Administrative Agent.

"***Interim Order***" shall mean an interim order of the Bankruptcy Court approving the Credit Documents and related matters in the form set forth as **Exhibit F**, with such modifications thereto solely with respect to those provisions thereof that affect the rights and duties of the Lenders, in form and substance satisfactory to the Required Lenders, as the same may be amended, supplemented, or modified from time to time after entry thereof solely with respect to those provisions thereof that affect the rights and duties of the Lenders, the consent of the Required Lenders.

"***Interim Order Entry Date***" shall mean the date on which the Interim Order is entered by the Bankruptcy Court.

"***Inventory***" means, as to any Person, all inventory (as that term is defined in the UCC) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including all inventory, merchandise, goods and other personal property that are held by or on behalf of such Person for sale or lease or are furnished or to be furnished under a contract of service or that constitute raw materials, work in process, finished goods, returned goods or materials or supplies of any kind.

"***Investment***" means, as to any Person, any direct or indirect acquisition or investment by such Person in another Person, in the form of: (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of Debt of, or purchase or other acquisition of any other debt or Equity Interests in, another Person, including any partnership, limited liability company or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Debt of such other Person. For purposes of covenant compliance, the amount of any Investment (i) shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person), (ii) if made by the transfer or exchange of property other than cash, shall be deemed to be the original principal or capital amount equal to the fair market value of such property at the time of such transfer or exchange, and (iii) if made in the form of a Guarantee or acquisition or assumption of Debt, shall be deemed the maximum principal amount of such Debt or maximum value of the obligation Guaranteed at the time of determination, as applicable.

"***IRS***" means the United States Internal Revenue Service or, as applicable, any successor agency.

"***Laws***" means, collectively, all international, foreign, federal, state and local laws, statutes, treaties, rules, authorities, guidelines, regulations, ordinances, codes and administrative or judicial precedents or judgments, orders, decrees, permits and other governmental restrictions, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations, concessions, grants, franchises and permits of, and agreements with, any Governmental Authority.

"***Lender***" means, initially, each Person signatory hereto as a "***Lender***" and, thereafter, each Person that has a Commitment or that has an outstanding Loan.

"***Lending Office***" means, as to any Lender, the account or office of such Lender described as such in such Lender's Administrative Detail Form, or such other account, office or offices as a Lender may from time to time notify Lead Borrower and Lending Parties.

"***Lending Parties***" means, collectively, Administrative Agent, Collateral Agent and Lenders.

"***Licenses***" means, as to any Person, all Copyright Licenses, Patent Licenses, Trademark Licenses or other licenses of Intellectual Property rights or interests now held or hereafter acquired by such Person.

"***Lien***" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any easement, right of way or other encumbrance on title to real property).

"***Liquidity***" shall mean, as of any date of determination, the amount of Qualified Cash as of such date.

"***Loan Parties***" means, collectively, the Borrowers and all Guarantors.

"***Loans***" or "***Term Loans***" means, individually or collectively, as the context may require, the Initial Term Loans and/or Delayed Draw Term Loans, as applicable.

"***Loss and Disposition Threshold Amount***" has the meaning specified therefor in **Section 2.03(c)(i)**.

"***Material Adverse Effect***" means a material adverse change in, or a material adverse effect on, (a) the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of the Lead Borrower and its Subsidiaries, taken as a whole; (b) the ability of any Loan Party to perform its obligations under the Credit Documents to which it is a party; or (c) the legality, validity, binding effect or enforceability of, or the rights or benefits available to (or remedies of) Administrative Agent or the Lenders under the Credit Documents; provided that, for the avoidance of doubt, it is understood and agreed that the following shall be disregarded in determining whether a "Material Adverse Effect" has occurred: the effect of (x) the filing of the Chapter 11 Cases, the events and conditions related to and/or leading up thereto and/or typically resulting from the filing of the cases under chapter 11 of the Bankruptcy Code, (y) any actions required to be taken under the Credit Documents or the Orders and (z) any matters (including, for the avoidance of doubt, any litigation) disclosed in schedules to the Credit Documents and/or publicly disclosed in any first day pleadings or declarations in the Chapter 11 Cases.

"***Material Contract***" means, with respect to any Loan Party and its Subsidiaries, each contract or agreement the loss of which would reasonably be expected to result in a Material Adverse Effect.

"***Material Debt***" means, with respect to any Person, Debt of such Person incurred under or evidenced by a single agreement or instrument or a series of related agreements and instruments, in each case in a principal outstanding amount in excess of $100,000 or its equivalent in other currencies other than Debt incurred under this Agreement and the other Credit Documents.

"***Maturity Date***" means the earliest to occur of:

(a) the Scheduled Maturity Date;

(b) the effective date of any Chapter 11 Plan;

(c) the date of acceleration or termination of the DIP Facility in accordance with the terms hereof; and

(d) the date of consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code (including, without limitation, consummation of the 363 Sale).

"***Milestones***" shall have the meaning given to such term in **Section 5.20**.

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

"***Net Proceeds***" means:

(a) 100% of the cash proceeds actually received by the Loan Parties or any Subsidiary from any Disposition, Event of Loss, or Extraordinary Receipts, net of:

(i) attorneys' fees, accountants' fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, required debt payments and required payments of other obligations that are secured by the applicable asset or property (including without limitation principal amount, premium or penalty, if any, interest and other amounts) (other than pursuant to the Credit Documents), other expenses and brokerage, consultant and other fees actually incurred in connection therewith; and

(ii) taxes paid or reasonably estimated to be payable as a result thereof (provided that, if the amount of any such estimated taxes exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition or Event of Loss, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid); and

(iii) with respect to Extraordinary Receipts, to the extent not duplicative of reductions to the amount of Extraordinary Receipts set forth in the definition thereof, the aggregate amount of the realized losses related to the event that caused the Extraordinary Receipt; and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by any Loan Party or Subsidiary of any Debt or Equity Interests, net of all taxes paid or reasonably estimated to be payable as a result thereof and fees (including investment banking fees and discounts), commissions, costs and other expenses, in each case incurred in connection with such issuance or sale; provided that, if the amount of any estimated taxes exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Proceeds at the time such taxes are actually paid;

provided that for purposes of calculating the amount of Net Proceeds, fees, commissions and other costs and expenses payable to any Loan Party or any Affiliate thereof shall be disregarded.

"***Note***" means each promissory note (if any) executed and delivered by the Borrowers in favor of a Lender evidencing that portion of the Loans owed to such Lender, such note being in form and substance acceptable to Administrative Agent (at the written direction of the Required Lenders) and such Lender.

"***Obligations***" means, collectively, all advances, debts, liabilities, guaranties, obligations, covenants and duties of each Loan Party to any Lending Party, in each of the foregoing cases, under or in respect of any Credit Document, whether with respect to the Term Loans (including the Premiums, interest, fees, expenses, or otherwise), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses, and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Bankruptcy Law naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses, and fees are allowed claims in such proceeding.

"***OFAC***" means the United States Office of Foreign Assets Control and any successor thereto.

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

"***Orders***" shall mean, collectively, the Interim Order and the Final Order.

"***Organizational Documents***" means: (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction) of such Person; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent comparable documents with respect to any non-U.S. jurisdiction) of such Person; (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 (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) of such Person; and (d) any agreement, instrument, filing or notice with respect thereto filed in connection with such Person's formation, governance, 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 Person.

"***Other Connection Taxes***" means, with respect to Administrative Agent, any other Lending Party or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Credit Document, Taxes imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections arising from such Person 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 Credit Document, or sold or assigned an interest in any Loan or Credit Document).

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than pursuant to an assignment request by a Loan Party).

"***Outstanding Amount***" means, with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to prepayments or repayments of such Loans or the making of such Loans, as the case may be, occurring on such date.

"***Paid in Full***" or "***Repaid in Full***" (or any variation thereof, such as "***payment in full***" or "***repayment in full***") means, with respect to any Obligations, the indefeasible payment in full of such Obligations in cash (other than Unasserted Obligations) (or otherwise to the written satisfaction, in such holder's discretion, of the holder thereof), and, in the event any such Obligations are paid over time or modified pursuant to Section 1129 of the Bankruptcy Code (or any similar provision of any other applicable Bankruptcy Law), shall further mean that the holder thereof shall have received the final payment due on account of such Obligations. For purposes of the foregoing, the "***holder***" of any applicable Obligations shall be deemed to be the Person entitled to receipt of payment thereof. Notwithstanding the foregoing, the Obligations shall not be deemed to have been Paid in Full until all Commitments have expired or been terminated in accordance with their terms.

"***Participant***" has the meaning given to such term in **Section 9.06(d)**.

"***Participant Register***" has the meaning given to such term in **Section 9.06(d)**.

"***Patent License***" means, as to any Person, all licenses and other similar rights now provided or hereafter provided to such Person (or in which such Person has rights or the power to transfer rights to a secured party) with respect to any Patent of another Person.

"***Patent Security Agreement***" has the meaning given to such term in the Collateral and Guarantee Agreement.

"***Patents***" means, as to any Person, all of the following in which such Person now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and applications filed with the United States Patent and Trademark Office or in any similar office or agency of any other country; and (b) all reissues, reexaminations, divisionals, continuations, continuations-in-part or extensions thereof and foreign counterparts thereof.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

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

"***Percentage Share***" means, as to any Lender, at any time, subject to the terms hereof, with respect to all payments, computations and other matters relating to the Term Loan Commitment or the Term Loan of any Lender, the percentage (expressed as a decimal carried out to the hundredth decimal place) obtained by *dividing* (i) the Term Loan Exposure of that Lender, by (ii) the aggregate Term Loan Exposure of all Lenders.

"***Permit***" means any permit, approval, authorization, certification, license, consent, exemption, variance, accreditation or permission required from or issued or granted by a Governmental Authority under any applicable Law or any accrediting organization.

"***Permitted Holders***" means the individuals identified on **Schedule 1.01**.

"***Permitted Liens***" has the meaning given to such term in **Section 6.01**.

"***Permitted Protest***" means the right of any Loan Party or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) Administrative Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Administrative Agent's Liens.

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

"***Petition Date***" shall have the meaning given to such term in the recitals to the Agreement.

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

"***Post-Petition***" shall mean the time period commencing immediately upon filing of the Chapter 11 Cases.

"***Premiums***" shall have the meaning given to such term in **Section 2.04(b)**.

"***Prepetition Note Obligations***" shall mean all "Notes Obligations" under and as defined in the Prepetition Promissory Note.

"***Prepetition Promissory Note***" means that certain Third Amended and Restated Note, dated as of March 18, 2025 (as restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof), by and among the Lead Borrower, the Loan Parties under and as defined therein and the lenders party thereto.

"***Proceeds***" means proceeds (as that term is defined in the UCC).

"***Public Lender***" has the meaning given to such term in **Section 9.02(b)(ii)**.

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

"***QFC Credit Support***" has the meaning specified therefor in **Section 9.16**.

"***Qualified Cash***" means, as of any date of determination, the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties on such date that is in a Collateral Account subject to a Control Agreement in favor of Administrative Agent and that is not subject to any Lien in favor of any Person (other than (i) Liens in favor of Administrative Agent under the Credit Documents and (ii) Liens permitted under **Sections 6.01(a)** and **6.01(n)**); provided that, for the avoidance of doubt, Qualified Cash shall not include any Cash Collateral securing any letters of credit or other Debt (whether or not permitted under this Agreement, but excluding the Prepetition Note Obligations); provided further that, notwithstanding the foregoing, prior to the date that is 30 days after the Closing Date (or such longer period as may be agreed in writing by the Required Lenders), such Collateral Accounts need not be subject to a Control Agreement in favor of Administrative Agent in order for such cash or Cash Equivalents to constitute Qualified Cash under this definition.

"***Register***" means a register for the recordation of the names and addresses of Lenders and, as applicable, the Loans and Commitments of, and Credit Outstandings owing to (including principal and stated interest), each Lender pursuant to the terms hereof from time to time.

"***Related Business***" means any business that is the same, similar or otherwise reasonably related, ancillary or complementary to the business of Lead Borrower and its Subsidiaries on the Closing Date.

"***Related Parties***" means, with respect to any Person, such Person's Affiliates and the partners, members, directors, officers, employees, agents, trustees, administrator, managers, advisors, consultants, service providers and representatives of such Person and of such Person's Affiliates, and specifically includes, in the case of the Lending Parties, GLAS USA LLC in its capacity as Administrative Agent.

"***Release***" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, indoor air, surface water, groundwater, land surface or subsurface strata).

"***Remedial Action***" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

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

"***Required Lenders***" shall mean, at any time, Lenders having outstanding Term Loans and unused Commitments hereunder representing more than 50% of the sum of all outstanding Term Loans and unused Commitments hereunder at such time; provided that, at any date of determination, (i) so long as One Madison Group – Plenty, LLC and/or any of its Affiliates or Approved Funds holds Term Loans or Commitments hereunder, Required Lenders shall include One Madison Group – Plenty, LLC (or such Affiliate or Approved Fund, as applicable), and (ii) so long as SVF II Pacific (DE) LLC and/or any of its Affiliates or Approved Funds holds Term Loans or Commitments hereunder, Required Lenders shall include SVF II Pacific (DE) LLC (or such Affiliate or Approved Fund, as applicable).

"***Responsible Officer***" means, with respect to each Loan Party, the chief executive officer, president, chief financial officer, treasurer, controller or assistant treasurer or any vice president of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Restricted Payment***" means, as to any Person: (a) any declaration or payment of any dividend or the making of any other payment or distribution, directly or indirectly, (whether in cash, securities or other property) with respect to any Equity Interests of such Person; (b) any payment, purchase, redemption, making of any sinking fund or similar payment, or other acquisition or retirement for value (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 Equity Interest of such Person (whether pursuant to put right or otherwise); (c) any making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of such Person now or hereafter outstanding; (d) any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Earn-Out Obligations or any other Debt of such Person which is subordinated to the payment of the Obligations; (e) the acquisition for value by such Person of any Equity Interests issued by such Person or any other Person that Controls such Person; (f) payment of any management, consulting, servicing or other similar fees payable to any Loan Party or any shareholder or other Affiliate thereof; and (g) any other transaction that has a similar effect as clauses (a) through (f) of this definition.

"***Sale Order***" means an order of the Bankruptcy Court, in form and substance acceptable to the Required Lenders, approving an Approved Sale.

"***Sanctioned Entity***" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"***Sanctioned Person***" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"***Sanctions***" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, Anti-Terrorism Laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) His Majesty's Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

"***Scheduled Maturity Date***" means [•], 2025[1]; provided that if such date is not a Business Day, the Scheduled Maturity Date shall be the immediately preceding Business Day.

"***SEC***" means the United States Securities and Exchange Commission and any successor thereto.

"***Security Interest***" means the Liens on the Collateral or any other collateral purported to be granted under the Orders and the Collateral Documents to any of the Lenders (or any sub agent or other Person acting for or on behalf of any Lender).

"***Specified Employment Agreement***" means any agreement between a Loan Party and any officer, director, or management-level employee, or any consultant or equity holder, of such Loan Party setting forth the terms of such Person's employment or engagement, including, without limitation, the compensation and other amounts payable to such Person.

"***Specified Materials***" means, collectively, all written materials provided by or on behalf of any Loan Party relating to the Loan Parties (or any of them) or their respective Affiliates or any other materials or matters relating to the Credit Documents (including any amendments or waivers of the terms thereof or supplements thereto).

"***Subsidiary***" of a Person means any other Person of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "***Subsidiary***" or to "***Subsidiaries***" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"***Superpriority Claims***" shall mean superpriority administrative expense claim status in the Chapter 11 Cases having a priority over all administrative expenses and any claims of any kind or nature whatsoever (but subject and subordinate to the Carve-Out), specified in or ordered pursuant to any applicable provisions of the Bankruptcy Code.

"***Supported QFC***" has the meaning specified therefor in **Section 9.16**.

"***Synthetic Lease Obligation***" means the monetary obligation of a Person under either: (a) a so called synthetic, off-balance-sheet or tax retention lease; or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the

[1] NTD: to be three months from the petition date.

insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

"***Term Loan and Commitments Schedule***" shall mean the Schedule attached hereto as **Schedule 2.01**.

"***Term Loan Exposure***" means, with respect to any Lender as of any date of determination, the sum of the amount of that Lender's unused Term Loan Commitment (if any) and the Outstanding Amount of the Term Loans of that Lender.

"***Threshold Amount***" means $100,000.

"***Trademark License***" means, as to any Person, all licenses and other similar rights now provided or hereafter provided to such Person (or in which such Person has rights or the power to transfer rights to a secured party) with respect to any Trademark of another Person.

"***Trademark Security Agreement***" has the meaning given to such term in the Collateral and Guarantee Agreement.

"***Trademarks***" means, as to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all Goodwill associated with or symbolized by any of the foregoing.

"***Transactions***" means the execution and delivery by the Loan Parties of the Credit Documents and the funding of the Loans hereunder.

"***UCC***" means the Uniform Commercial Code as in effect from time to time in the State of New York, except when used in connection with the perfection of the Collateral, in which case, "***UCC***" means the Uniform Commercial Code as in effect from time to time in the applicable jurisdiction with respect to such affected Collateral.

"***Unasserted Obligations***" means, at any time, Obligations consisting of obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities (except for the principal of and interest on, and fees relating to, any Debt) in respect of which no claim or demand for payment has been made (or, in the case of obligations for indemnification, no notice for indemnification has been issued by the Indemnitee) at such time.

"***Unfunded Pension Liability***" means that the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is less than 60%.

"***United States***" and "***U.S.***" mean the United States of America.

"***Updated Budget***" shall have the meaning given to such term in **Section 5.21**.

"***Updated Budget Delivery Date***" shall have the meaning given to such term in **Section 5.21**.

"***Upfront Premium***" shall have the meaning given to such term in **Section 2.04(a)**.

"***U.S. Government Securities Business Day***" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"***Withholding Agent***" means any Loan Party and Administrative Agent.

SECTION 1.02 CERTAIN RULES OF CONSTRUCTION.

(a) **General Rules.**

(b) (i) Unless the context otherwise clearly requires, the meaning of a defined term is applicable equally to the singular and plural forms thereof.

(ii) The words "***hereof,***" "***herein,***" "***hereunder***" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) The word "***documents***" includes instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(iv) The words "***include***" and "***including***" are not limiting and, unless the context otherwise clearly requires, the word "***or***" is not exclusive.

(v) A "***Default***" or "***Event of Default***" hereunder referenced as "continuing" (or any variation thereof) shall: (A) with respect to a Default that has not yet matured into an Event of Default, be deemed to be continuing unless and until cured within any applicable cure period set forth in this Agreement; and (B) with respect to an Event of Default, be deemed to be continuing unless and until waived in writing by Required Lenders or all Lenders, as applicable.

(vi) In the computation of periods of time from a specified date to a later specified date, the word "***from***" means "***from and including***"; the words "***to***" and "***until***" each mean "***to but excluding***" and the word "***through***" means "***to and including***".

(vii) Unless the context otherwise clearly requires, the words "***property,***" "***properties,***" "***asset***" and "***assets***" refer to both personal property (whether tangible or intangible) and real property.

(viii) As used herein, "***ordinary course of business***" means, in respect of any transaction involving any Person, the ordinary course of business of such Person, as undertaken by such Person in accordance with past practices or reasonable extensions of such past practices, as applicable, or otherwise undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Credit Document.

(ix) Wherever the phrase "***to the knowledge of any Loan Party***" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Credit Document, unless otherwise indicated, such phrase shall mean and refer to the actual knowledge of a Responsible Officer of any Loan Party.

(x) Unless the context otherwise clearly requires: (A) Article, Section, subsection, clause, Schedule and Exhibit references are to this Agreement; (B) references to documents (including this Agreement) shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Credit Document; (C) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation; and (D) or unless prohibited by the terms of any Credit Document, references to any Person shall be deemed to include such Person's successors and assigns.

(b) **Time References**. Unless the context otherwise clearly requires, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

(c) **Captions**. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(d) **Cumulative Nature of Certain Provisions**. This Agreement and the other Credit Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall be performed in accordance with their respective terms.

(e) **No Construction Against Any Party**. This Agreement and the other Credit Documents are the result of negotiations among, and have been reviewed by counsel to, the Loan Parties, Administrative Agent and the other Lending Parties and are the products of all parties. Accordingly, they shall not be construed against Administrative Agent or any other Lending Party merely because of the involvement of any or all of the preceding Persons in their preparation.

(f) **GAAP**. Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, except as otherwise specifically prescribed herein. If at any time any change in GAAP would affect the computation of any financial ratio, financial covenant or other requirement set forth in any Credit Document and either Lead Borrower or Required Lenders shall so request, Administrative Agent, Lending Parties and Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Required Lenders); provided that, until so amended: (i) such financial ratio, financial covenant or other requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Loan Parties shall provide or cause to be provided to Administrative Agent and the other Lending Parties financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such financial ratio, financial covenant or other requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained herein, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Debt at the fair value thereof.

(g) **Rounding**. Any financial ratios required to be maintained by the Loan Parties or any of them pursuant to the Credit Documents shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number using the common – or symmetric arithmetic – method of rounding (in other words, rounding up if there is no nearest number).

(h) **Documents Executed by Responsible Officers**. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate or other organizational action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

(i) **UCC Terms**. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise requires, have the meanings provided by those definitions. Subject to the foregoing, the term "***UCC***" refers, as of any date of determination, to the UCC then in effect.

(j) **Divisions**. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (i) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (ii) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II
CREDIT EXTENSIONS

SECTION 2.01 TERM LOANS.

(a) **Initial Term Loans**. Subject to the terms and conditions set forth herein and in the Orders, each Initial Term Lender agrees (severally, not jointly or jointly and severally) to make term loans (each, an "***Initial Term Loan***" and collectively, the "***Initial Term Loans***") to the Borrowers on the Closing Date, in a single borrowing, in a principal amount equal to such Lender's Initial Term Loan Commitment.

(b) **Delayed Draw Term Loans**. Subject to the terms and conditions set forth herein and in the Orders, each Delayed Draw Term Lender agrees (severally, not jointly or jointly and severally) to make additional term loans (each, a "***Delayed Draw Term Loan***" and collectively, the "***Delayed Draw Term Loans***") to the Borrowers on each Delayed Draw Term Loan Borrowing Date, in an aggregate principal amount for all Delayed Draw Term Loans up to such Lender's Delayed Draw Term Loan Commitment.

For the avoidance of doubt, no Term Loan (or any portion thereof) that has been repaid or prepaid may be reborrowed. Notwithstanding anything to the contrary contained herein, in no event shall Lenders be obligated to make to Borrowers, or Borrowers be entitled to borrow or receive from Lenders, any loans, advances or extensions of credit hereunder other than the Term Loans.

SECTION 2.02 INTEREST.

(a) **Interest**.

(i) Subject to the provisions hereof (including **Sections 2.02(b)**), the Term Loans shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at all times and calculated from and including the date of such Borrowing to but excluding the date of repayment thereof) at a rate per annum equal to 12.00%.

(ii) Interest accrued on each Loan pursuant to this **Section 2.02(a)** and **2.02(b)** shall be paid in kind by being capitalized and added to the outstanding principal balance of the applicable

Loans as additional principal obligations thereunder on and as of the last calendar day of each month and on the applicable Maturity Date (such interest added to the principal in accordance with this clause (ii) is referred to herein as "***PIK Interest***"). PIK Interest shall automatically constitute Obligations and a part of the outstanding principal amount of the applicable Loans for all purposes hereof (including, without limitation, the accrual of interest thereon at the rates applicable to the Loans generally, application of payments pursuant to **Section 7.02(c)(ii)**, and any determination of the Premiums).

(b) **Default Rate**. Notwithstanding anything to the contrary contained in **Section 2.02(a)**, at any time that an Event of Default has occurred and is continuing, then, from the date of such Event of Default and for so long as such Event of Default is continuing, unless Required Lenders otherwise agree and without affecting any of Administrative Agent's or any Lender's rights and remedies hereunder or in respect hereof, all (or, in the sole discretion of Required Lenders, any portion) of the Obligations shall automatically bear interest in cash (after as well as before judgment), payable by the Borrowers on demand, at the rate otherwise applicable to such Loan pursuant to **Section 2.02(a)** <u>plus</u> 2.00% per annum (such rate, the "***Default Rate***").

SECTION 2.03 PAYMENT AND PREPAYMENT OF PRINCIPAL

Subject to the provisions hereof:

(a) **Payment on Maturity Date**. Borrowers shall repay in full the Credit Outstandings and all other Obligations in cash on the Maturity Date.

(b) **Voluntary Prepayments**. At any time and from time to time, Borrowers may voluntarily prepay the Outstanding Amount of the Loans, in whole or in part, upon not less than three (3) Business Days' prior irrevocable written notice to Administrative Agent (or such shorter period as Administrative Agent may otherwise agree); <u>provided</u>, that any prepayment of the Loans shall be in a principal amount of not less than $500,000, or an integral multiple of $500,000 in excess thereof (or, if less, the entire Outstanding Amount of the Loans). All prepayments of the Term Loans pursuant to this **Section 2.03(b)** shall be applied to the Outstanding Amount of the Term Loans.

(c) **Mandatory Prepayments**.

(i) <u>Loss and Disposition Payments</u>. In the event that Net Proceeds resulting from any (A) Event of Loss or (B) Disposition or series of Dispositions by any Borrower or any Subsidiary of any Borrower pursuant to **Section 6.05(b)** within any Fiscal Year exceed, in the aggregate for all such Events of Loss and Dispositions in such Fiscal Year, $100,000 (the "***Loss and Disposition Threshold Amount***"), within three (3) Business Days of receipt of such Net Proceeds, Borrowers shall prepay the Loans in an amount equal to the sum of: (1) 100% of such Net Proceeds that exceed the Loss and Disposition Threshold Amount in such Fiscal Year, *plus* (2) interest (at the rate then applicable to the Loans) on the amounts in the immediately preceding clause (1) through and including the date of prepayment. Nothing contained in this **Section 2.03(c)(i)** shall permit Loan Parties to sell or otherwise Dispose of any assets other than in accordance with **Section 6.05**. All mandatory prepayments of the Loans pursuant to this **Section 2.03(c)(i)** shall be applied to the Outstanding Amount of the Loans in accordance with **Section 2.03(d)**.

(ii) <u>Payments in respect of Extraordinary Receipts</u>. Within three (3) Business Days after the date of receipt by Loan Parties or their Subsidiaries of the Net Proceeds of any Extraordinary Receipts, Borrower shall prepay the Loans in an amount equal to the lesser of (1) 100% of such Net Proceeds received and (2) the Outstanding Amount of the Loans. All mandatory prepayments of the Loans pursuant to this **Section 2.03(c)(ii)** shall be applied to the Outstanding Amount of the Loans on in accordance with **Section 2.03(d)**.

(iii) Payments in respect of Debt. Within three (3) Business Days after the date of receipt by Loan Parties or their Subsidiaries of the Net Proceeds of any Debt incurred (other than Debt permitted under **Section 6.03**), Borrowers shall prepay the Loans in an amount equal to the lesser of (1) 100% of such Net Proceeds received and (2) the Outstanding Amount of the Loans. All mandatory prepayments of the Loans pursuant to this **Section 2.03(c)(iii)** shall be applied to the Outstanding Amount of the Loans in accordance with **Section 2.03(d)**. The provisions of this **Section 2.03(c)(iii)** shall not be deemed to be implied consent to any incurrence of Debt otherwise prohibited by the terms of this Agreement.

(iv) Declining Mandatory Prepayments. Each Lender may elect, of any prepayment of Term Loans required to be made by the Borrowers pursuant to this **Section 2.03(c)**, to decline all (but not a portion) of its pro rata share of the outstanding Term Loans of such prepayment (such declined amounts, the "***Declined Proceeds***" and, any such Lender, a "***Declining Lender***"), in which case such Declined Proceeds shall be offered to Lenders that are not Declining Lenders on a pro rata basis, and any Declined Proceeds remaining thereafter may be retained by the Borrowers.

(d) **Application of Prepayments**. Subject to **Section 7.02(c)**, all amounts prepaid on account of the Outstanding Amount of the Loans shall be applied to the remaining installments of the Loans to each Lender on a pro rata basis according to their respective Percentage Share.

(e) **Notice of Payments**. Lead Borrower shall provide written notice of any payments made pursuant to **Section 2.03(c)** by 12:00 p.m. (noon) one (1) Business Day prior to the proposed prepayment date, which notice shall state pursuant to which paragraph of **Section 2.03(c)** the prepayment is being made.

SECTION 2.04 CERTAIN FEES AND PREMIUMS.

(a) ***Upfront Premium***. On the Closing Date, the Borrowers agree to pay Administrative Agent for the account of the Lenders, an upfront premium in an amount equal to 5.00% of the aggregate amount of such Lender's Term Loan Commitments on the Closing Date (the "***Upfront Premium***"), which shall be fully earned and payable in kind in the form of additional Term Loans on the Closing Date, subject to the entry of the Interim Order.

(b) ***Exit Premium***. Upon the earlier of (i) the Maturity Date (including as a result of an acceleration), (ii) the date on which any of the Obligations are paid in part or in full or Term Loan Commitments are terminated in part or in full (other than the termination of any Commitment as a result of the funding of Terms Loans) and (iii) the occurrence of any Event of Default pursuant to **Section 7.01(f)** hereunder, the Borrowers agree to pay to the Administrative Agent for the account of the Lenders, an exit premium in an amount equal to 4.00% of the aggregate amount, without duplication, of such Lender's Term Loans and Term Loan Commitments as of such date (or in the case of clause (ii), of the aggregate principal amount of the Obligations in respect of such Lender's Term Loans being paid on such date and any Term Loan Commitments being terminated on such date) (the "***Exit Premium***" and, together with the Upfront Premium, the "***Premiums***"), which shall be fully earned on the Closing Date, subject to the entry of the Interim Order, and payable on the date of any event specified in clauses (i), (ii) or (iii) hereof in cash. The parties hereto further acknowledge and agree that the Exit Premium shall be presumed to be the liquidated damages sustained by each Lender as a result of the early repayment, prepayment or acceleration of the Loans (and not intended to act as a penalty or to punish the Loan Parties for any such repayment, prepayment or acceleration). EACH OF THE BORROWERS AND THE OTHER LOAN PARTIES EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE

PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING EXIT PREMIUM IN ACCORDANCE WITH THE TERMS HEREOF. Each of the Borrowers and the Loan Parties expressly agrees that (i) the Exit Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Exit Premium shall be payable notwithstanding the then prevailing market rates at the time payment or redemption is made, (iii) there has been a course of conduct between the Lenders, the Borrowers and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Exit Premium, (iv) the Borrowers and the Loan Parties shall be estopped hereafter from claiming differently than as agreed to herein, (v) their respective agreement to pay or guarantee the payment of the Exit Premium is a material inducement to the Lenders to make the Loans, and (vi) the Exit Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event.

(c) ***Other Fees***. Borrowers shall pay to Administrative Agent, for its own account, fees in the amounts and at the times specified in Administrative Agent Fee Letter. All fees shall be fully earned when due and, once paid, shall be non-refundable for any reason whatsoever and shall be in addition to the reimbursement of Administrative Agent's and Lender's reasonable and documented out-of-pocket expenses in accordance with **Section 9.04**.

(d) All fees, discounts and premiums payable hereunder shall be paid on the dates due, in immediately available funds, to the Lenders, in the case of discounts and premiums due to the Lenders hereunder. The Loan Parties and the Lenders agree that (i) the fees, discounts and premiums paid hereunder (A) are made without set-off or counterclaim and (B) shall not be refundable under any circumstances and (ii) for U.S. federal, and applicable state and local, income tax purposes, the Borrowers and the Lenders shall treat (A) the Upfront Premium on the Initial Term Loans as reducing the "issue price" of the corresponding Loans, (B) the Upfront Premium on the Delayed Draw Term Loans as premium for an option to put the corresponding Loans to the Lenders and (C) the Exit Premium on the then-outstanding Obligations as part of the "stated redemption price at maturity" of the applicable Loans, and the Loan Parties and the Lenders shall not take any inconsistent position on any Tax return or otherwise with respect to U.S. federal, and applicable state and local, income taxes (whether in audits, Tax returns or otherwise), unless required to do so pursuant to a change in law following the date hereof or a "determination" as defined under Section 1313 of the Code.

SECTION 2.05 PROCEDURES.

(a) The Lead Borrower may request a Borrowing by delivering a Borrowing Request, duly completed and given by Lead Borrower to Administrative Agent not later than 12:00 p.m. (noon), three (3) Business Days prior to each Borrowing or such shorter period as Administrative Agent and the Required Lenders may otherwise agree.

(b) Each Borrowing Request shall be irrevocable, shall be given in substantially the form of **Exhibit C** and shall specify (i) the aggregate principal amount of the Term Loans to be made pursuant to such Borrowing, (ii) whether such Term Loan is an Initial Term Loan or a Delayed Draw Term Loan, (iii) the requested date of such Borrowing, which shall be a Business Day, and (iv) that the proceeds of the Term Loans shall be disbursed in accordance with the Approved Budget (or as otherwise consented to by the Required Lenders in writing).

SECTION 2.06 MANNER OF PAYMENTS

(a) **Payments on Business Days**. If any payment hereunder becomes due and payable on a day that is not a Business Day, then such due date shall be extended to the next succeeding Business Day; provided that interest and fees shall continue to accrue during the period of any such extension.

(b) **Computations**. All interest and fees owing hereunder shall be computed on the basis of a year of 360 days and calculated in each case for the actual number of days elapsed.

(c) **Evidence of Debt**. The Term Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Term Loans made by Lenders to Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrowers hereunder to pay any amount owing with respect to the Obligations. If any conflict exists between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender, Borrowers shall execute and deliver to such Lender a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

SECTION 2.07 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;

(ii) subject any Lending Party to any Taxes (other than (A) Indemnified Taxes or (B) Excluded Taxes contained herein) on any Term Loans made by it, its Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement and the Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Person of making, converting to, continuing or maintaining any Loan or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lending Party, Borrowers shall pay to such Lending Party such additional amount or amounts as will compensate such Lending Party for such additional costs incurred or reduction suffered.

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

(c) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this **Section 2.07**, as well as the basis for determining such amount or amounts, and delivered to Lead Borrower shall be conclusive absent manifest error. Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this **Section 2.07** shall not constitute a waiver of such Lender's right to demand such compensation, provided that Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this **Section 2.07** for any reductions suffered more than six months prior to the date that such Lender notifies Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine month period referred to in this subsection (d) shall be extended to include the period of retroactive effect thereof).

(e) **Survival**. All obligations of each Loan Party under this **Section 2.07** shall survive termination of the Commitments and the payment in full of all other Obligations and the earlier resignation or removal of Administrative Agent.

SECTION 2.08 PAYMENTS FREE OF TAXES.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any obligation of any Loan Party under any Credit Document shall be made free and clear of and without reduction, deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 2.08**), the applicable Lending Party receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(c) **Indemnification by Loan Parties**. Each Loan Party shall jointly and severally indemnify Administrative Agent, any other Lending Party or any other recipient of any payment to be made by or on account of any obligation of any Borrower or any Loan Party hereunder or under any Credit Document, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to the amounts payable under this **Section 2.08**) payable or paid by such Person or required to be withheld or deducted from a payment to such Person and any reasonable expenses arising therefrom or with respect thereto (including reasonable attorneys' and tax advisors' fees and expenses), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Lead Borrower by any such Person (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of such Person, shall be conclusive absent manifest error.

(d) **Indemnification by Lenders**. Each Lender hereby agrees to severally indemnify Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of any Loan Party to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 9.06(d)** relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Credit 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this **Section 2.08(d)**.

(e) **Evidence of Payments**. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this **Section 2.08**, such Loan Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f) **Status of Lenders**.

(i) Any Lender which is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to Administrative Agent, at the time or times reasonably requested by Administrative Agent, such properly completed and executed documentation reasonably requested by Administrative Agent as will permit such payments to be made without withholding Tax or at a reduced rate of withholding Tax. In addition, any Lender, if reasonably requested by Administrative Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by Administrative Agent as will enable Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 2.08(f)(ii)(A)**, **(ii)(B)** and **(ii)(D)**) shall not be required if, in such Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is not a Foreign Lender shall deliver to Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Administrative Agent), executed valid copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (I) with respect to payments of interest under any Credit Document, executed valid copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (II) with respect to any other applicable payments under any Credit Document, executed valid copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed valid copies 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, (I) a certificate substantially in the form of **Exhibit D-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 Lead Borrower within the meaning of Section 881(c)(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 (II) executed valid copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed valid copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-2** or **Exhibit D-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 D-4** on behalf of each such direct and indirect partner;

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

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

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

(g) **Treatment of Certain Refunds**. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 2.08** (including by the payment of additional amounts pursuant to this **Section 2.08**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 2.08** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party incurred in obtaining such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) **Survival**. All obligations of each Loan Party under this **Section 2.08** shall survive termination of the Commitments, the payment in full of all other Obligations and the earlier resignation or removal of Administrative Agent.

SECTION 2.09 SHARING OF PAYMENTS.

If any Lender shall, by exercising any right of setoff, recoupment or counterclaim or otherwise, obtain payment in respect of any Credit Outstandings or accrued and unpaid interest thereon resulting in such Lender receiving payment of a proportion of the Credit Outstandings or accrued and unpaid interest thereon greater than its Percentage Share (or other applicable share) thereof as provided herein, then such Lender receiving such greater proportion shall: (a) notify Administrative Agent of such fact; and (b) purchase (for cash at face value) participations in that portion of the Credit Outstandings or accrued and unpaid interest thereon held by the other applicable 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 their respective Percentage Shares thereof; provided that: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this **Section 2.09** shall not be construed to apply to: (A) any payment made by Borrowers pursuant to and in accordance with the express terms of this Agreement; or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any portion of the Credit Outstandings held by it to any assignee or participant, other than to any Loan Party (as to which the provisions of this **Section 2.09** shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Laws, that any Lender acquiring a participation pursuant to the foregoing arrangements may, except to the extent otherwise specified in such Lender's participation agreement, exercise against such Loan Party rights of setoff, recoupment and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

SECTION 2.10 PAYMENTS GENERALLY.

(a) **Payments Generally**. All payments to be made by any Loan Party hereunder shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Loan Party hereunder shall be made to Administrative Agent, for the account of Administrative Agent, the Lenders or such other parties to which such payment is owed, at Administrative Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. In the case of any payment for the account of the Lenders, Administrative Agent will promptly distribute to each Lender its applicable Percentage Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by Administrative Agent after 11:00 a.m. may, in Administrative Agent's discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) **Clawback Rights**.

(i) Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of the making of the Loans that such Lender will not make available to Administrative Agent such Lender's share thereof, Administrative Agent may assume that such Lender has made such share available on such date and may (but shall not be obligated to), in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the Loans available to Administrative Agent, then the applicable Lender, on the one hand, and each Borrower, on the other hand, each severally agrees to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from the date such amount is made available to Borrowers to the date of payment to Administrative Agent, at: (A) in the case of a payment to be made by such Lender, the Federal Funds Effective Rate; and (B) in the case of a payment to be made by Borrowers, the interest rate applicable to the Loans. If any Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to the applicable Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the Loans to Administrative Agent, then the amount so paid shall constitute such Lender's Loans included within all Loans. Any payment by a Borrower shall be without prejudice to any claim any Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(ii) Unless Administrative Agent shall have received notice from Lead Borrower prior to the date on which any payment is due hereunder to Administrative Agent for the account of Lenders that Borrowers will not make such payment, Administrative Agent may assume that Borrowers has made such payment on such date in accordance herewith and may (but shall not be obligated to), in reliance upon such assumption, distribute to Lenders the amount due. In such event, if Borrowers have not in fact made such payment, then each Lender severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from the date such amount is distributed to it to the date of payment to Administrative Agent, at the Federal Funds Effective

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

(c) **Failure to Satisfy Conditions Precedent**. If any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Article II**, and such funds are not made available to Borrowers by Administrative Agent because the conditions to the applicable Term Loans set forth in **Article III** are not satisfied or waived in accordance with the terms hereof, then Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several**. The obligations of Lenders hereunder to make Loans and to make payments under **Section 9.04(c)** are several and not joint. The failure of any Lender to make any Loans or to make any payment under **Section 9.04(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loans or to make its payments under **Section 9.04(c)**.

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

SECTION 2.11 TERMINATION AND REDUCTION OF COMMITMENTS.

(a) The Initial Term Loan Commitments shall automatically and permanently terminate upon the making of the Initial Term Loans on the Closing Date.

(b) The Delayed Draw Term Loan Commitment of each applicable Lender shall be automatically and permanently reduced by the aggregate amount of Delayed Draw Term Loans funded by such Lender on each Delayed Draw Term Loan Borrowing Date. The remaining Delayed Draw Term Loan Commitment of each Lender shall automatically and permanently terminate the earlier of (i) the Maturity Date and (ii) the date upon which all Delayed Draw Term Loan Commitments of each Lender have been permanently terminated.

SECTION 2.12 PRIORITY AND LIENS.

(a) The relative priorities of the Liens on the Collateral of the Debtors shall be as set forth in the Interim Order (and, when entered, the Final Order). Subject to the entry of the Interim Order (and, when entered, the Final Order), and the provisions, limitations and/or exceptions set forth in this Agreement and/or any other Credit Document, the Liens granted by the Debtors on the Collateral in favor of the Lenders shall be effective and perfected without the necessity of the execution or recordation of filings by any such Debtor of security agreements, mortgages, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Lenders of, or over, any Collateral, and no further actions shall be taken with respect thereto in any jurisdiction; provided that, for the avoidance of doubt, each such Lien shall be subject and subordinate to the Carve-Out.

(b) In the event that any Loan Party that is a Debtor receives any payment or property in violation of the payment and lien priorities described herein or in the Orders, such Debtor shall be deemed to have received such payment in trust for the Lenders in accordance with the provisions hereof and thereof and shall promptly turn over such amounts (in the form received, with any necessary endorsements) to such Lenders.

SECTION 2.13 CO-BORROWERS.

(a) Each Borrower accepts joint and several liability hereunder in consideration of the financial accommodation to be provided by the Administrative Agent, the Collateral Agent and the Lenders under this Agreement and the other Credit Documents, as applicable, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of each Borrower to accept joint and several liability for the Obligations of each other Borrower.

(b) Each Borrower shall be jointly and severally liable for the Obligations, regardless of which Borrower actually receives the Loans hereunder or the amount of the Obligations received or the manner in which the Administrative Agent or any Lender. Each Borrower's obligations with respect to Loans made to it, and each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans made to and other Obligations owing by the Borrowers hereunder, shall be separate and distinct obligations, but all such obligations shall be primary obligations of each Borrower.

(c) Each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans made to and other Obligations owing by the Borrowers hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (A) the validity or enforceability, avoidance or subordination of the obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the obligations of any other Borrower, (B) the absence of any attempt to collect the Obligations from any other Borrower, any other guarantor, or any other security therefor, or the absence of any other action to enforce the same, (C) the waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument evidencing the obligations of any other Borrower, or any part thereof, or any other agreement now or hereafter executed by any other Borrower and delivered to the Administrative Agent or any Lender, (D) the failure by the Collateral Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the obligations of any other Borrower, (E) the Administrative Agent's or any Lender's election, in any proceeding instituted under the Bankruptcy Code of the United States, of the application of Section 1111(b)(2) of the Bankruptcy Code of the United States, (F) any borrowing or grant of a security interest by any other Borrower, as Debtor In Possession under Section 364 of the Bankruptcy Code of the United States, (G) the disallowance of all or any portion of the Administrative Agent's or any Lender's claim(s) for the repayment of the obligations of any other Borrower under Section 502 of the Bankruptcy Code of the United States, or (H) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower (other than a defense of Payment in Full of the applicable Obligations). With respect to each Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans made to, and other Obligations owing by, the Borrowers hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement and the other Credit Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Administrative Agent or any Lender now has or may hereafter have against such Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Administrative Agent, the Collateral Agent or any Lender to secure payment of the Obligations or any other liability of any Borrower to the Administrative Agent, the Collateral Agent or any Lender.

(d) Upon the occurrence and during the continuation of any Event of Default, the Administrative Agent and the Lenders may proceed directly and at once, without notice, against any Borrower in accordance with the terms of this Agreement and the other Credit Documents to collect and recover the full amount, or any portion of the Obligations, without first proceeding against any other Borrower or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that the Administrative Agent and the Lenders shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

(e) Each Borrower hereby irrevocably appoints Plenty Unlimited Inc., as the borrowing agent and attorney-in-fact for the Borrowers (together with its successors and assigns, the "**Lead Borrower**"), which appointment shall remain in full force and effect unless and until the Administrative Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed in the place of Plenty Unlimited Inc., as applicable. Each Borrower hereby irrevocably appoints and authorizes the Lead Borrower (i) to provide to the Administrative Agent and receive from the Administrative Agent all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Credit Documents and (ii) to take such action as the Lead Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Collateral of the Borrowers in a combined fashion, as more fully set forth herein and in the Collateral Documents, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents nor the Lenders shall incur liability to the Borrowers as a result hereof. Each of the Borrowers expects to derive benefit, directly or indirectly, from the handling of the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

(f) In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Borrower hereunder would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability hereunder, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Borrower, any Loan Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

ARTICLE III
CONDITIONS TO EFFECTIVENESS

SECTION 3.01 CONDITIONS PRECEDENT TO CLOSING DATE.

The obligation of each Lender to make Initial Term Loans on the Closing Date is subject to the satisfaction or written waiver by the Required Lenders of the following conditions precedent:

(a) Administrative Agent shall have received a counterpart of this Agreement, duly executed by each of the parties hereto and thereto;

(b) Administrative Agent shall have received a counterpart of each Collateral Document (other than the Control Agreements), duly executed by each of the parties thereto and (i) with respect to the Collateral Documents, any document or deed required to be delivered, filed, registered, notarized, recorded or published under the relevant Collateral Documents or in order to create and perfect the Security Interests created thereunder as first priority Liens shall have been properly delivered, filed, registered, notarized, recorded or published in each office or publication, as the case may be, in each jurisdiction in which such deliveries, filings, registrations, notarizations, recordations and publications are required; it being understood that any financing statements required to be filed under the Uniform Commercial Code shall have been made (and the Administrative Agent shall have received acknowledgment copies or other evidence satisfactory to the Administrative Agent that all necessary deliveries, filings, notarizations, recordations and publications have been made or shall be made and all fees, taxes and expenses related to such deliveries, filings, notarizations, registrations, recordings and publications have been or shall be paid in full), in connection with the grant and perfection of Security Interests in the Collateral under the Collateral Documents and (ii) with respect to the Trademark Security Agreement, the filing of thereof with the US Patent and Trademark Office shall have been properly initiated;

(c) the representations and warranties of the Loan Parties set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for such representations and warranties which by their term are made as of a specified date, which shall be true and correct in all material respects as of such specified date (other than any representations and warranties that are already qualified by materiality, Material Adverse Effect or words of similar import, in which case they shall be true and correct in all respects);

(d) Administrative Agent shall have received a certificate dated as of the Closing Date and executed by a Responsible Officer of each of the Loan Parties, certifying:

(i) that (A) attached thereto is (1) a true and complete copy of the articles or certificate of incorporation or other comparable organizational document of such Loan Party, certified by the relevant authority of the jurisdiction of organization of such Loan Party and (2) a true and complete copy of the bylaws, operating or comparable governing document of such Loan Party and (B) such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date);

(ii) that attached thereto is a true and complete copy of resolutions or written consents of its equityholders or board of directors, as the case may be, authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect without amendment, modification or rescission; and

(iii) as to the incumbency and genuineness of the signature of the officers, directors, managers or other authorized signatories of each Loan Party executing this Agreement and the other Credit Documents to which it is a party;

(e) Administrative Agent shall have received a customary closing certificate, dated as of the Closing Date and signed by a Responsible Officer of Lead Borrower on behalf of each Borrower, confirming compliance with the conditions precedent set forth in **Sections 3.01(c)**, **3.01(g)**, **3.01(j)**, **3.01(l)**, **3.01(m)**, **3.01(n)**, **3.01(p)** and **3.01(q)**;

(f) Administrative Agent shall have received a certificate as of a recent date of the good standing (or equivalent) of each of the Loan Parties under the laws of its jurisdiction of organization from the relevant authority of its jurisdiction of organization;

(g) since the Petition Date, no Material Adverse Effect shall have occurred;

(h) Administrative Agent shall have received the results of recent Lien and judgment searches reasonably required by the Required Lenders, and such search shall reveal no material judgments and no Liens on any of the assets of the Loan Parties except for Liens expressly permitted pursuant to **Section 6.01**;

(i) the Loan Parties shall have paid all fees, premiums, expenses and other amounts due and payable to the Administrative Agent and the Lenders arising from, related to or otherwise incurred in connection with the Chapter 11 Cases (whether arising prior to or following the Petition Date) on the Closing Date (including the reasonable and documented out-of-pocket expenses incurred by Administrative Agent and the Lenders in accordance with **Section 9.04** to the extent invoiced prior to the date hereof (including the documented fees and out-of-pocket expenses of (i) Davis Polk & Wardwell LLP, as legal counsel to certain Lenders (ii) Sullivan & Cromwell LLP, as legal counsel to certain Lenders, (iii) Porter Hedges LLP, as legal counsel to certain Lenders, and (iv) Moses Singer LLP as legal counsel to the Administrative Agent));

(j) at the time of and immediately after giving effect to the Borrowing of the Initial Term Loans on the Closing Date, no Default or Event of Default shall have occurred and be continuing;

(k) Administrative Agent shall have received a Borrowing Request with respect to the Initial Term Loans in accordance with **Section 2.05**;

(l) the Petition Date shall have occurred, and each Loan Party as of the Closing Date shall be a debtor and a debtor-in-possession in the Chapter 11 Cases;

(m) the Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code;

(n) the Interim Order Entry Date shall have occurred and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Required Lenders, and the Debtors shall be in compliance with the Interim Order;

(o) Administrative Agent shall have received (i) the Initial Budget and (ii) a copy of a long-form financial model of the Lead Borrower prepared by the Lead Borrower's management in form and substance acceptable to the Required Lenders;

(p) no trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases; and

(q) all applicable Milestones designated for satisfaction on or prior to the Closing Date shall have been accomplished in accordance with the terms herein (unless waived or extended by the Required Lenders).

For purposes of determining compliance with the conditions specified in this **Section 3.01**, each Lender and the Administrative Agent that has executed this Agreement (or an Assignment and Assumption on the Closing Date) shall be deemed to have consented to, approved or accepted or to be satisfied with the satisfaction of each condition above unless an officer of such Lender responsible for the transactions contemplated by the Credit Documents shall have delivered a notice prior to the Closing Date specifying its objection thereto and such Lender shall not have made available such Lender's ratable portion of the Term Loans.

SECTION 3.02 CONDITIONS PRECEDENT TO DELAYED DRAW TERM LOAN BORROWING DATE.

The obligation of each Delayed Draw Term Lender to make Delayed Draw Term Loans pursuant to the Delayed Draw Term Loan Commitments on a Delayed Draw Term Loan Borrowing Date is subject to the satisfaction or written waiver by the Required Lenders of the following conditions precedent:

(a) the Closing Date shall have occurred;

(b) Administrative Agent shall have received a Borrowing Request with respect to the Delayed Draw Term Loans in accordance with **Section 2.05**;

(c) the representations and warranties of the Loan Parties set forth in this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing Request and on such Delayed Draw Term Loan Borrowing Date as if made on each such date, except for such representations and warranties which by their term are made as of a specified date, which shall be true and correct in all material respects as of such specified date (other than any representations and warranties that are already qualified by materiality, Material Adverse Effect or words of similar import, in which case they shall be true and correct in all respects);

(d) at the time of and immediately after giving effect to the Borrowing of such Delayed Draw Term Loans, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(e) the Final Order Entry Date shall have occurred and the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to any stay and shall not have been modified or amended in any respect without the consent of the Required Lenders;

(f) the Lenders shall have valid, binding, enforceable, non-avoidable, and automatically and fully and perfected Liens on, and security interests, in the Collateral, in each case, having the priorities set forth in the Orders and subject and subordinate to the Carve-Out;

(g) the Chapter 11 Cases shall not have been dismissed or converted to cases under chapter 7 of the Bankruptcy Code;

(h) no trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with expanded powers shall have been appointed in any of the Chapter 11 Cases;

(i) Administrative Agent shall have received the Updated Budget most recently required to have been delivered pursuant to **Section 5.21(a)** and such Updated Budget shall have been accepted (or deemed accepted) in accordance therewith and (ii) all Budget Variance Reports then required to be delivered pursuant to **Section 5.21(b)**;

(j) all applicable Milestones designated for satisfaction prior to such Delayed Draw Term Loan Borrowing Date shall have been accomplished or satisfied in accordance with the terms herein (unless waived or extended by the Required Lenders); and

(k) the Administrative Agent shall have received a certificate from a Responsible Officer of the Lead Borrower, dated as of such Delayed Draw Term Loan Borrowing Date, certifying that conditions set forth in **Sections 3.02(c)**, **3.02(d)**, **3.02(e)**, **3.02(f)**, **3.02(g)**, **3.02(h)** and **3.02(j)** have been satisfied.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to each Lending Party that:

SECTION 4.01 CORPORATE EXISTENCE AND POWER.

Subject to the entry of the Orders and the terms thereof, each of the Loan Parties and their respective Subsidiaries: (a) is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation (subject to such changes after the Closing Date as are permitted under the Credit Documents); (b) has the power and authority and all governmental licenses, authorizations, consents and approvals: (i) to own its assets and carry on its business, except to the extent that any failure to have any of the foregoing could not reasonably be expected to have a Material Adverse Effect; and (ii) to execute, deliver, and perform its obligations under the Credit Documents to which each is a party; and (c) is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, and is licensed and in good standing under the laws of each jurisdiction where its ownership, leasing or operation of property or the conduct of its business requires such qualification or license, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.02 CORPORATE AUTHORIZATION; NO CONTRAVENTION.

Subject to the entry of the Orders and the terms thereof, the execution and delivery by each of the Loan Parties and their respective Subsidiaries (to the extent such Subsidiary is party hereto or to any other Credit Document) of, and the performance by each of the Loan Parties and their respective Subsidiaries of its obligations under, each Credit Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not: (a) contravene the terms of any of such Person's Organizational Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under: (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any Subsidiary thereof or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law, in the case of clauses (b) and (c) hereof, except as could not reasonably be expected to have a Material Adverse Effect. Subject to the entry of the Orders and the terms thereof, each of the Loan Parties and their respective Subsidiaries are in compliance with all Contractual Obligations, except to the extent that any failure to be in compliance could not reasonably be expected to have a Material Adverse Effect. Subject to the entry of the Orders and the terms thereof, no Loan Party or any Subsidiary thereof is a party to or is bound by any Contractual Obligation, or is subject to any restriction in any Organizational Document, or any requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

SECTION 4.03 GOVERNMENTAL AUTHORIZATION; COMPLIANCE WITH LAWS.

(a) **Governmental Authorizations**. Subject to the entry of the Orders and the terms thereof, no approval, consent, exemption, authorization, order, or other action by, or notice to, or filing, registration, or qualification with, any Governmental Authority is necessary or required in connection with the execution and delivery by any Loan Party of, or the performance by any Loan Party of its obligations under, any Credit Document to which it is a party, or the consummation of the transactions contemplated by this Agreement and the other Credit Documents, in each case, other than (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Credit Documents, or (iii) those approvals, consents, exemptions, authorizations, or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) **Compliance with Laws**. Each Loan Party and each Subsidiary thereof are in compliance in all respects with the requirements of all Laws (including the Patriot Act) and all orders, writs, injunctions and decrees applicable to it or to its properties, except (i) in such instances in which the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (ii) any violations that arise as a result of the commencement of Chapter 11 Cases and any violations that may otherwise be excused by the Bankruptcy Court.

(c) **Certain Actions**. Subject to the entry of the Orders and the terms thereof, no Loan Party is engaged in or has engaged in any course of conduct that could subject any of their respective properties to any Lien, seizure or other forfeiture under any racketeer influenced and corrupt organizations law, whether civil or criminal, or other similar Laws.

SECTION 4.04 BINDING EFFECT.

This Agreement has been, and each other Credit Document (when delivered hereunder) will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders and the terms thereof, this Agreement and each other Credit Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other Laws of general application effecting enforcements of creditors' rights or general principles of equity.

SECTION 4.05 LITIGATION.

Except for the Chapter 11 Cases, matters subject to the automatic stay under section 362 of the Bankruptcy Code or as otherwise specifically disclosed on **Schedule 4.05**, there are no actions, suits, proceedings, claims or disputes pending, or to the knowledge of each Loan Party, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, against any Loan Party or any Subsidiary thereof that: (a) purport to affect or pertain to any Credit Document or any of the transactions contemplated hereby or thereby; or (b) could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Credit Document.

SECTION 4.06 NO DEFAULTS.

No Default or Event of Default exists or could reasonably be expected to result from the incurring of any Obligations by any Loan Party or from the grant and perfection of the Liens upon the Collateral in favor of Administrative Agent. No Loan Party is in default under or with respect to any Contractual Obligation in any respect that, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the Closing Date, create an Event of Default under **Section 7.01(f)**.

SECTION 4.07 EMPLOYEE BENEFIT PLANS.

(a) **Compliance with ERISA Generally**. Unless it could not reasonably be expected, individually or in the aggregate, to result in liabilities in excess of the Threshold Amount or otherwise have a Material Adverse Effect: (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Laws; (ii) each Plan which is intended to qualify under subsection 401(a) of the Code either (A) has obtained from the IRS a favorable determination letter from the IRS as to its qualified status under the Code, or the expiration of the requisite period under applicable regulations promulgated by the IRS under the Code or IRS pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination has not occurred, or (B) has been established under a prototype plan for which an IRS opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer, and nothing has occurred that would cause the loss of such qualification.

(b) **No Actions**. Unless it could not reasonably be expected, individually or in the aggregate, to result in liabilities in excess of the Threshold Amount or otherwise have a Material Adverse Effect: (i) there are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan and (ii) there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) **Certain Events**. Unless it could not reasonably be expected, individually or in the aggregate, to result in liabilities in excess of the Threshold Amount or otherwise have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur, and (ii) no Pension Plan has any Unfunded Pension Liability. No event or circumstance has occurred or exists that, if such event or circumstance had occurred or arisen after the Closing Date, would create an Event of Default under **Section 7.01(h)**.

SECTION 4.08 USE OF PROCEEDS.

Subject to the Orders and the terms thereof, the Borrowers shall use the proceeds of the Loans solely in accordance with and as provided in the Approved Budget (subject to permitted variances), or as otherwise consented to by the Required Lenders in writing.

SECTION 4.09 TITLE TO ASSETS.

Subject to the terms of the applicable Orders, each Loan Party and each Subsidiary thereof has (a) good record and marketable title in fee simple to, or valid leasehold interests in, or valid rights to use (including easements) all real property material to the ordinary conduct of their respective businesses or reflected on the most recent financial statements delivered pursuant hereto, and (b) good and marketable title to all of their respective personal property reflected on the most recent financial statements delivered pursuant hereto.

SECTION 4.10 TAXES.

Subject to Bankruptcy Law, the terms of the applicable Orders and any required approval by the Bankruptcy Court, each Loan Party and each Subsidiary thereof has filed all federal, state (including sales tax) and other material Tax returns and reports required to be filed, and has paid prior to delinquency all federal, state (including sales tax) and other taxes, assessments, fees and other governmental charges shown thereon, and all other material taxes and assessments on it or any of its properties otherwise due and payable, except those that are subject to a Permitted Protest and with respect to which no notice of Lien has been filed in any filing office, or the payment of which has been stayed by the commencement of the Chapter 11 Cases. There is no unpaid proposed tax assessment against any Loan Party or any Subsidiary thereof that, if made, could reasonably be expected to have a Material Adverse Effect.

SECTION 4.11 FINANCIAL CONDITION.

(a) **Financial Statements**.

(i) Lead Borrower has furnished to Administrative Agent for distribution to each Lender its unaudited consolidated balance sheet and related consolidated statements of income or operations, shareholders' (or members') equity and cash flows as of and for the fiscal quarter ended December 31, 2024. Such financial statements present fairly in all material respects the financial condition and results of operations and cash flows of the Lead Borrower and its Subsidiaries as of its respective date and for such periods. Such financial statements were prepared in all material respects in accordance with GAAP.

(ii) The financial projections included in the Initial Budget and any Updated Budget prepared by or on behalf of the Lead Borrower or any of its representatives and that have been made available to any Lender in connection with the Transactions or the Credit Documents have been prepared in good faith based upon assumptions believed by the Lead Borrower to be reasonable at the time furnished (it being understood that the projections are as to future events and are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the control of the Lead Borrower, that no assurance can be given that any particular financial projection will be realized, that actual results may differ significantly from projected results and that such differences may be material).

(b) **No Material Adverse Effect**. Since the Petition Date, no Material Adverse Effect has occurred.

SECTION 4.12 ENVIRONMENTAL MATTERS.

Except as disclosed on **Schedule 4.12**, the Loan Parties have reasonably concluded that the effect of existing Environmental Laws and existing Environmental Claims, if any, individually or in the aggregate, do not, and could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.13 INTELLECTUAL PROPERTY.

Each Loan Party and each Subsidiary thereof owns or is licensed, or otherwise has the right to use, all of the Intellectual Property that is reasonably necessary for the operation of its business. To the knowledge of each Loan Party, the use of such Intellectual Property by the Loan Parties and their Subsidiaries and the operation of their respective businesses do not infringe any valid and enforceable intellectual property rights of any other Person. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of each Loan Party, threatened, in writing.

SECTION 4.14 EQUITY INTERESTS HELD BY LOAN PARTIES; EQUITY INTERESTS IN BORROWERS.

As of the Petition Date: (a) no Loan Party has Subsidiaries other than those listed on **Schedule 4.14**; (b) no Loan Party holds Equity Interests in any other Person other than those specifically disclosed on **Schedule 4.14**; and (c) the holders of all Equity Interests in each Loan Party (other than the Lead Borrower) are those listed on **Schedule 4.14**. All of the outstanding Equity Interests in each Loan Party and in each Subsidiary thereof have been validly issued and are fully paid and non-assessable.

SECTION 4.15 INSURANCE.

The properties of each Loan Party are insured with financially sound and reputable insurance companies that are not Affiliates of any of the Loan Parties, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or its Subsidiary operates. A true and complete listing of such insurance as of the Petition Date, including issuers, coverages and deductibles, is set forth on **Schedule 4.15**.

SECTION 4.16 COLLATERAL AND COLLATERAL DOCUMENTS.

Subject to the entry of the Orders and the terms thereof, the provisions of this Agreement and each of the other Collateral Documents, when delivered, are effective to create in favor of Administrative Agent, for the benefit of the Lending Parties, a valid and enforceable security interest or other Lien in all right, title, and interest of each Loan Party that is a party thereto in the Collateral described therein. Subject to the entry of the Orders and the terms thereof, each such security interest or other Lien in favor of Administrative Agent, to the extent the same may be perfected by the filing of a UCC financing statement or by control (within the meaning of the UCC), has, except as otherwise expressly provided in any Collateral Document, been perfected. Except as otherwise expressly provided herein or in any other Collateral Document (including the Orders), each security interest or other Lien in the Collateral described in any Collateral Document constitutes a perfected, first-priority security interest or other Lien in the subject Collateral (subject to Permitted Liens having priority by operation of law and except to the extent otherwise expressly provided in any Credit Document or expressly agreed to in writing by Administrative Agent), subject to no Liens other than Permitted Liens.

SECTION 4.17 LABOR RELATIONS.

There are no strikes, lockouts or other material labor disputes against any Loan Party or any Subsidiary thereof or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any Subsidiary thereof, and no significant unfair labor practice complaint is pending against any Loan Party or any Subsidiary thereof or, to the knowledge of any Loan Party, threatened against any of them before any Governmental Authority, in each case, except as could not reasonably be expected to have a Material Adverse Effect. Except as set forth on **Schedule 4.17**: (a) none of the Loan Parties is a party to any collective bargaining agreements or contracts; and (b) no union representation exists and, to the knowledge of each Loan Party, no union organizing activities are taking place on any of the properties owned or operated by any Loan Party or any of its Subsidiaries.

SECTION 4.18 OFAC; SANCTIONS; ANTI-CORRUPTION LAWS; ANTI-MONEY LAUNDERING LAWS.

No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a

Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender or other individual or entity participating in any transaction).

SECTION 4.19 FULL DISCLOSURE.

As of the Closing Date, all written information concerning the Lead Borrower and its Subsidiaries and the Chapter 11 Cases (other than any projections, forward-looking information and information of a general economic or general industry nature) prepared by or on behalf of the Loan Parties or any of their respective representatives and made available to any Lender on or prior to the Closing Date, when taken as a whole, did 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 were made (after giving effect to all supplements and updates thereto from time to time provided on or prior to the Closing Date).

As of the Closing Date, the projections prepared by or on behalf of the Lead Borrower or any of its representatives and that have been made available to any Lender on or prior to the Closing Date in connection with the Transactions have been prepared in good faith based upon assumptions believed by the Lead Borrower to be reasonable at the time furnished (it being understood that the projections are as to future events and are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the control of the Lead Borrower, that no assurance can be given that any particular financial projection will be realized, that actual results may differ significantly from projected results and that such differences may be material).

SECTION 4.20 BUDGET VARIANCE REPORT.

Each Budget Variance Report delivered pursuant to **Section 5.21(b)** is true, complete and correct in all material respects for the period covered thereby as of the date such Budget Variance Report is delivered.

SECTION 4.21 ORDERS.

The Debtors are in compliance in all material respects with the terms and conditions of the Orders. Each of the Interim Order (with respect to the period prior to the entry of the Final Order) and the Final Order (from and after the Final Order Entry Date) is in full force and effect and has not been vacated or reversed, is not subject to a stay and has not been modified or amended other than solely with respect to those provisions thereof that affect the rights and duties of the Lenders, the consent of each Lender.

ARTICLE V
AFFIRMATIVE COVENANTS

So long as any Obligations (other than Unasserted Obligations) have not been Repaid in Full:

SECTION 5.01 FINANCIAL STATEMENTS AND COLLATERAL REPORTING.

Lead Borrower shall deliver, or shall cause to be delivered, to Administrative Agent for distribution by Administrative Agent to each Lender, the following, in form and detail reasonably satisfactory to Administrative Agent and Required Lenders:

(a) **Annual Financial Statements**. As soon as available, but in any event within 180 days after the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2024, an unaudited consolidated balance sheet for the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, shareholders' (or members') equity and cash flows for such Fiscal Year (setting forth, in each case in comparative form the figures for the previous Fiscal Year), all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be certified by an Authorized Financial Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, shareholders' (or members') equity and cash flows of the Lead Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

SECTION 5.02 CERTIFICATES; OTHER INFORMATION.

Lead Borrower shall deliver or cause to be delivered to Administrative Agent the following, in form and detail reasonably satisfactory to Administrative Agent and Required Lenders:

(a) **Compliance Certificate**. Concurrently with the delivery of the financial statements referred to in **subsection (a)** of **Section 5.01** and on every Updated Budget Delivery Date, a duly completed Compliance Certificate signed by an Authorized Financial Officer of the Lead Borrower;

(b) **Additional Accountant Reports**. Promptly after any request by Administrative Agent or any other Lending Party, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any Subsidiary thereof, or any audit of any of them;

(c) **Equity Interest Holder Reports and Certain Public Filings**. Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the holders of Equity Interests of any Loan Party and copies of all annual, regular, periodic and special reports and registration statements that any Loan Party may file or is required to file with the SEC under Section 13 or Section 15(d) of the Exchange Act, and, in each case, not otherwise required to be delivered to Administrative Agent pursuant hereto;

(d) **Debt Holder Reports**. Promptly, and in any event within ten (10) Business Days after the furnishing thereof, copies of any material statement or material report furnished to any holder of Debt of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement that are not otherwise required to be furnished to Lending Parties pursuant to **Section 5.01** or any other clause of this **Section 5.02**;

(e) **Materials from or to Governmental Authorities**. Promptly, and in any event within ten (10) Business Days after receipt thereof by any Loan Party, copies of each material notice or other material correspondence received from, or delivered to, any Governmental Authority concerning any investigation or possible investigation or other inquiry by such agency regarding any material financial or other material operational results of any Loan Party or any Subsidiary thereof;

(f) **Changes in Officers and Directors**. Promptly, and in any event within ten (10) Business Days of a Responsible Officer of any Loan Party becoming aware thereof, written notice of any change in the Persons constituting any of the officers or directors of a Loan Party;

(g) **Tax Returns**. No later than ten (10) Business Days after the date they are required to be filed (after giving effect to any applicable extensions), executed and dated copies of any material state and federal income tax returns of each Loan Party and each of its Subsidiaries and all related schedules, and copies of any extension requests; and

(h) **Additional Information**. Promptly upon (but no later than ten (10) Business Days after) request therefor by any Lending Party, such additional information (including budgets, sales projections, operating plans and other financial information and any information required to be delivered pursuant to the terms of the Patriot Act) regarding the business or the financial or corporate affairs of any Loan Party or any Subsidiary thereof or any assets thereof or the compliance by any Loan Party or any Subsidiary thereof with the terms of the Credit Documents or any other matter related to the Loan Parties and their Subsidiaries, in each case, as Administrative Agent or any Lending Party may from time to time reasonably request.

The Loan Parties shall be permitted to deliver all documents required to be delivered pursuant to **Section 5.01** or **Section 5.02(a)** electronically, including by email. If such documents are so delivered, they shall be deemed to have been delivered on the date: (i) on which the Loan Parties post such documents, or provide a link thereto on the Loan Parties' website on the Internet at the website address listed on **Schedule 9.02**; (ii) on which such documents are posted on the Loan Parties' behalf on an Electronic Platform to which each Lending Party has access or (iii) on which the Loan Parties has received a "read" response if sent by email.

SECTION 5.03 NOTICES.

Lead Borrower shall, upon any Responsible Officer of any Loan Party or any Subsidiary thereof becoming aware thereof, promptly (and in any event within five (5) Business Days) notify of such event each Lending Party in writing of:

(a) **Defaults**. The occurrence of any Default or Event of Default;

(b) **Matters Involving a Material Adverse Effect**. Any matter that, to the knowledge of any Loan Party, has resulted or could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, including any such matter arising from: (i) any breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary thereof; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws; or (iv) the loss of all or any material portion of the Collateral;

(c) **ERISA Events**. The occurrence of any ERISA Event (together with a copy of any notice to or from the PBGC regarding such ERISA Event);

(d) **Labor Controversies**. Any material labor controversy resulting in or that is reasonably likely to result in any material strike, work stoppage, boycott, shutdown or other material labor disruption against or involving any Loan Party or any Affiliate thereof;

(e) **Regulatory Developments**. Any material developments with respect to United States federal or state or foreign laws, rules and regulations (including, without limitation, with respect to taxes and tariffs or environmental certifications) that could reasonably be expected to increase supply or operational costs of the Loan Parties' business in any material respect;

(f) **Litigation**. The filing or commencement of any action, suit, litigation, investigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Loan Party or any Subsidiary thereof that has resulted in, or could reasonably be expected to result in, liability in excess of the Threshold Amount, or (ii) with respect to any Credit Document;

(g) **Financial Matters**. Any material change in accounting policies or financial reporting practices by Lead Borrower or any Subsidiary thereof;

(h) **New Subsidiaries**. The acquisition or formation of any Subsidiary by any Loan Party; and

(i) **Material Contracts**. Any termination (other than termination upon expiry of the stated term of the agreement) or loss of a Material Contract, any default or event of default (however defined) beyond any applicable notice requirement or cure period under a Material Contract that gives the non-defaulting party the right to terminate such Material Contract, or any material modification, amendment, or supplement to any Material Contract.

Each notice pursuant to this **Section 5.03** shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action, if any, Lead Borrower (or the other applicable Person) has taken or proposes to take with respect thereto. Each notice given pursuant to **Section 5.03(a)** shall describe with particularity any and all provisions of this Agreement and any other Credit Document that have been (or could reasonably be expected to be) breached or violated.

SECTION 5.04 PAYMENT OF CERTAIN OBLIGATIONS.

Subject to Bankruptcy Law, the terms of the applicable Order and any required approval by the Bankruptcy Court, each Loan Party shall and shall cause each of its Subsidiaries to pay and discharge prior to delinquency all material Tax liabilities, assessments and governmental charges or levies upon their respective properties, other than to the extent that the validity of such Tax liability, assessment or governmental charge or levy is the subject of a Permitted Protest.

SECTION 5.05 PRESERVATION OF EXISTENCE, ETC.

Each Loan Party shall and shall cause each of its Subsidiaries to: (a) preserve, renew and maintain in full force and effect their respective legal existence and good standing under the Laws of the jurisdiction of their organization except in a transaction expressly permitted by **Section 6.04** or **Section 6.05**; (b) take all reasonable actions to maintain all rights, privileges, Permits, licenses and franchises necessary or material in the normal conduct of their respective businesses; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

SECTION 5.06 MAINTENANCE OF PROPERTIES.

Each Loan Party shall and shall cause each of its Subsidiaries to: (a) maintain, preserve and protect all of their respective material properties and material equipment necessary to the operation of their respective businesses in good working order and condition, ordinary wear and tear and permitted Dispositions hereunder excepted; (b) make all commercially reasonable repairs thereto and renewals and replacements thereof; and (c) use commercially reasonable efforts to operate the facilities owned, leased or operated by such Person now or in the future in a manner believed by such Person to be consistent with prevailing industry standards in the locations where the facilities exist from time to time. Each Loan Party shall maintain all material records required to be maintained by all applicable Environmental Laws.

SECTION 5.07 MAINTENANCE OF INSURANCE.

Each Loan Party shall and shall cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to their respective properties and businesses against loss or damage (including, without limitation, business interruption) of the kinds customarily insured against by Persons engaged in a Related Business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons. Subject to **Section 5.18**, all property policies shall have a lender's loss payable endorsement showing Administrative Agent, for the ratable benefit of the Lending Parties, as lender loss payee, and all liability policies shall show Administrative Agent, on behalf of the Lending Parties, or have endorsements showing Administrative Agent, on behalf of the Lending Parties, as an additional insured. To the extent maintained by the Loan Parties, business interruption insurance shall be assigned as collateral security to Administrative Agent, for the ratable benefit of the Lending Parties. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Administrative Agent, on behalf of the Lending Parties, at least thirty (30) days' notice before canceling, amending, or declining to renew its policy and ten (10) days' notice of any non-payment of premiums. At any Lending Party's request, Lead Borrower shall deliver copies of all of the insurance policies of Loan Parties and their Subsidiaries certified as complete and correct copies and that such insurance is in full force and effect. If any Loan Party fails to obtain insurance as required under this **Section 5.07** or to pay any amount or furnish any required proof of payment to third persons and Lenders, Administrative Agent may make all or part of such payments or obtain such insurance policies required in this **Section 5.07** and take any action under the policies that Lenders and Administrative Agent deem necessary or prudent.

SECTION 5.08 COMPLIANCE WITH LAWS.

Each Loan Party shall and shall cause each of its Subsidiaries to comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to them or to their respective properties or businesses, except in such instances in which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect. Each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

SECTION 5.09 BOOKS AND RECORDS.

Each Loan Party shall and shall cause each of its Subsidiaries to: (a) maintain proper Books and Records, in which full, true and correct (in all material respects) entries in conformity with GAAP consistently applied are made of all financial transactions and matters involving their respective properties and businesses; and (b) maintain such Books and Records in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over them, as the case may be.

SECTION 5.10 INSPECTION RIGHTS.

Each Loan Party shall, and shall cause each of their respective Subsidiaries to, permit representatives and independent contractors of Administrative Agent to visit and inspect any of their respective properties, to examine their corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, members, managers and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Person, and the Borrowers shall promptly reimburse Administrative Agent for all costs and expenses incurred in connection therewith; provided, that unless an Event of Default exists, the cost of only two such visits and inspections per calendar year shall be borne by Borrowers; provided further, that when an Event of Default exists, Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of Borrowers at any time and without advance notice and as many times as Administrative Agent may require.

SECTION 5.11 USE OF PROCEEDS.

Borrowers shall use the proceeds of the Term Loans solely for the purposes described in **Section 4.08**.

SECTION 5.12 COLLATERAL ACCOUNTS AND EXCLUDED ACCOUNTS.

(a) **Schedule 5.12** sets forth details with respect to all Collateral Accounts of each Loan Party and its Subsidiaries in existence on the Petition Date, including whether each such Collateral Account is an Excluded Account.

(b) Each Loan Party shall, and shall cause each of its Subsidiaries to, provide Administrative Agent five (5) days' prior written notice (or such shorter period as Administrative Agent, in its sole discretion, may otherwise agree) before: (i) establishing any new Collateral Account at or with any bank or other financial institution; or (ii) terminating or otherwise materially modifying any the existing Collateral Account. For each Collateral Account which is not an Excluded Account that any Loan Party at any time maintains, the Loan Parties shall (except to the extent specifically not required by Administrative Agent in writing) cause the applicable bank or other financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Administrative Agent's Lien, for the ratable benefit of each Lender, in such Collateral Account in accordance with the terms hereof and the Collateral Documents.

SECTION 5.13 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

Each Loan Party shall and shall cause each of its Subsidiaries to: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of their respective material Intellectual Property; (b) promptly advise Administrative Agent in writing of material infringements of their respective Intellectual Property known to any Loan Party or any of its Subsidiaries; and (c) not allow any Intellectual Property that any Loan Party, acting reasonably, believes is material to the business of the Borrowers or any of their Subsidiaries to be abandoned, forfeited or dedicated to the public without Administrative Agent's written consent.

SECTION 5.14 LITIGATION COOPERATION.

The Loan Parties shall make available to Lending Parties, without expense to Lending Parties, each Loan Party and its officers, employees and agents and such Loan Party's Books and Records, to the extent that any Lending Party may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against any Lending Party with respect to any collateral the subject of any Collateral Document or relating to such Loan Party.

SECTION 5.15 ERISA COMPLIANCE.

Except as could not be expected to result in liability to a Loan Party in excess of the Threshold Amount, the Loan Parties shall comply and shall cause each of its Subsidiaries to comply with the provisions of ERISA with respect to any Pension Plans to which Lead Borrower or any such Subsidiary is a party as employer.

SECTION 5.16 MATERIAL CONTRACTS.

Contemporaneously with the delivery of each Compliance Certificate (or such later date as agreed to by Administrative Agent in its reasonable discretion) pursuant to **Section 5.02(a)**, Lead Borrower shall provide Administrative Agent with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate.

SECTION 5.17 FURTHER ASSURANCES.

Promptly upon the written request by Administrative Agent, each Loan Party shall and shall cause each of its Subsidiaries (other than Plenty Japan KK) to take such further acts (including the acknowledgement, execution, delivery, recordation, filing and registering of documents) as may reasonably be required from time to time to: (i) carry out more effectively the purposes of this Agreement or any other Credit Document; (ii) subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents or any other properties, rights or interests (including real property) acquired by any Loan Party or any Subsidiary (other than Plenty Japan KK) thereof following the Closing Date; (iii) perfect and maintain the validity, effectiveness and priority of the Liens created or intended to be created by any of the Credit Documents; and (iv) better assure, convey, grant, assign, transfer, preserve, protect and confirm to Lending Parties the rights, remedies and privileges existing or granted or now or hereafter intended to be granted to such Persons under any Credit Document or other document executed in connection therewith. Without limiting the generality of the foregoing, as soon as practicable but in any event within 10 days (or such longer period as Administrative Agent may agree) following any Person (other than Plenty Japan KK) becoming a Subsidiary of any Loan Party, cause to be delivered to Administrative Agent each of the following, as applicable:

(a) a Joinder (as defined in the Collateral and Guarantee Agreement) to the Collateral and Guarantee Agreement duly executed by such Subsidiary, together with executed counterparts of each other Credit Document reasonably requested by Administrative Agent, including all Collateral Documents and other documents reasonably requested to establish and preserve the Lien of Administrative Agent in all Collateral of such Subsidiary;

(b) (i) Uniform Commercial Code financing statements naming such Person as "Debtor" and naming Administrative Agent for the benefit of the Lenders as "Secured Party," in form, substance and number sufficient in the reasonable opinion of Administrative Agent or its counsel to be filed by the Loan Parties in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of Administrative Agent for the benefit of the Lenders the Lien on the Collateral conferred under such security instrument to the extent such Lien may be perfected by Uniform Commercial Code filing, and, once filed, copies of such Uniform Commercial Code financing statements, and (ii) pledge agreements (which pledge, if reasonably requested by Administrative Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), control agreements, Documents and original collateral (including pledged Equity Interests (other than Excluded Property), Securities (as defined in the UCC) and Instruments (as defined in the UCC)) and such other documents and agreements as may be reasonably required by Administrative Agent, all as necessary to establish and maintain a valid, perfected security interest in favor of Administrative Agent for the benefit of the Lending Parties in all Collateral in which such Subsidiary has an interest consistent with the terms of the Credit Documents;

(c) current copies of the organization documents of each such Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such organization documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this **Section 5.17**, all certified by the applicable Governmental Authority or appropriate officer as Administrative Agent may elect; and

(d) no less than three (3) Business Days prior to becoming a Loan Party, all "know-your-customer" and customer due diligence documentation satisfactory to Administrative Agent and the Lenders to the extent such information is requested by Administrative Agent or any other Lending Party reasonably promptly after written notice to Administrative Agent of the proposed joinder of a Loan Party.

SECTION 5.18 POST-CLOSING COVENANT.

The Loan Parties shall perform or cause to be performed each of the conditions subsequent set forth in **Schedule 5.18** within the time periods specified therein.

SECTION 5.19 ENVIRONMENTAL.

The Loan Parties shall, and shall cause each of their respective Subsidiaries to,

(a) Except with respect to those matters disclosed on **Schedule 4.12**, keep any property either owned or operated by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Administrative Agent documentation of such compliance which Administrative Agent reasonably requests, and

(c) Promptly notify Administrative Agent of any Release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or its Subsidiaries and take any Remedial Actions required to abate said Release or otherwise to come into compliance, in all material respects, with applicable Environmental Law.

SECTION 5.20 MILESTONES.

Each Loan Party shall achieve the milestone set forth on **Schedule 5.20** hereto (the "***Milestones***") unless waived or extended by the Required Lenders (it being understood that any such waiver or extension may be provided by email from the legal advisors to the Required Lenders).

SECTION 5.21 OTHER BUSINESS AND FINANCIAL INFORMATION.

Lead Borrower shall deliver (which delivery may be made by email), or shall cause to be delivered, to Administrative Agent for distribution by Administrative Agent to each Lender:

(a) not later than 11:59 p.m. (New York City time) on every fourth Thursday occurring after the Petition Date (each, an "***Updated Budget Delivery Date***"), commencing with April 17, 2025 (or if any such Thursday is not a Business Day, the next Business Day thereafter), a Budget for the period commencing on the Saturday immediately preceding the applicable Updated Budget Delivery Date through and including the Budget Termination Date (each, an "***Updated Budget***"), in form and substance acceptable to the Required Lenders; provided that:

(i) such Updated Budget shall be deemed acceptable to the Required Lenders if the Required Lenders have not objected (which may be provided by email to the Lead Borrower, including from the legal advisors to the Required Lenders) to such Updated Budget within five (5) Business Days after receipt by the Required Lenders of such Updated Budget;

(ii) the failure of any Updated Budget to be accepted by the Required Lenders shall not be deemed to be a violation of this **Section 5.21** and no Default or Event of Default shall result from any objection by the Required Lenders to any Updated Budget; and

(iii) for the avoidance of doubt, upon (and subject to) the acceptance (or deemed acceptance) by the Required Lenders of any Updated Budget, such Updated Budget shall constitute an Approved Budget.

(b) not later than 11:59 pm (New York City time) on each Thursday occurring after the Petition Date, commencing with the Thursday of the third full calendar week occurring after the Petition Date (or to the extent such Thursday is not a Business Day, the next Business Day thereafter), a Budget Variance Report for the most recently ended Budget Variance Test Period; and

(c) not later than 11:59 pm on every Thursday occurring after the Closing Date, commencing with the Thursday of the second full week after the Petition Date, or to the extent such Thursday is not a Business Day, the next Business Day thereafter, a certificate of a Responsible Officer on behalf of the Lead Borrower certifying the amount of Liquidity as of the Friday immediately preceding such delivery date.

SECTION 5.22 CERTAIN BANKRUPTCY MATTERS

(a) The Loan Parties shall comply in all material respects after entry thereof, with all of the requirements and obligations set forth in the Approved Bankruptcy Court Orders, as each such order is amended and in effect from time to time in accordance with this Agreement; provided that, notwithstanding anything herein to the contrary, any actions taken to enforce any rights or remedies arising from a breach of this **Section 5.22** shall be subject to any requirements in the Orders.

(b) The Loan Parties shall provide counsel for the Lenders drafts of all material pleadings, motions and proposed orders (including all Approved Bankruptcy Court orders, and all "second day" motions and proposed orders) at least two (2) Business Days prior to filing with the Bankruptcy Court, unless an emergency filing after the "first day" filings is required and then the Loan Parties shall provide as much advance notice as is practicable under the circumstances.

(c) The Loan Parties shall use commercially reasonably efforts to obtain any required regulatory and/or third-party approvals and consents for the consummation and implementation of the restructuring transactions.

(d) The Loan Parties shall provide counsel to the Required Lenders with drafts of any press release or other public statements that constitute disclosure of the existence of terms regarding the restructuring at least two (2) Business Days prior to making this disclosure.

(e) The Loan Parties shall not file, support, solicit or take any action in further of a plan of reorganization that is not an Approved Plan of Reorganization.

(f) The Loan Parties shall support and take all steps necessary and desirable to consummate an Approved Plan.

SECTION 5.23 BANKRUPTCY NOTICES.

The Lead Borrower will furnish to the Administrative Agent (for delivery to each Lender), to the extent reasonably practicable, prior to any of the Loan Parties or their Subsidiaries filing with the Bankruptcy Court, the Final Order and all other proposed orders and pleadings relating to the Term Loans and the Credit Documents, any other financing or use of Cash Collateral, any sale or other disposition of Collateral outside the ordinary course having a value in excess of the Threshold Amount, cash management, adequate protection, any Chapter 11 Plan and/or any disclosure statement.

SECTION 5.24 MANAGEMENT CONFERENCE CALLS.

(a) Lead Borrower (including at least one senior member of Lead Borrower's management team) shall, and shall cause its financial advisors to, participate in an in-person meeting with the Lenders at reasonable times during business hours to be mutually and reasonably agreed from time to time between the Loan Parties and the Lenders, to review the most recently delivered Budget Variance Reports, financial statements, the financial and operational performance and forecasts of Loan Parties and other reports and materials provided pursuant to **Section 5.01** and **Section 5.21**.

(b) Lead Borrower shall make the members of their senior management (including the chief executive officer and chief financial officer) and its professional advisors, available from time to time, at reasonable times, and during business hours, upon the reasonable request of and reasonable advance notice to the Lenders and their professional advisors to discuss, inform and/or confer on the matters described in clause (a) above and other matters reasonably related thereto.

SECTION 5.25 PRIORITY OF LIENS AND CLAIMS.

Each Loan Party hereby covenants, represents and warrants that, upon entry of the Interim Order (and when applicable, the Final Order), its Obligations hereunder and under the other Credit Documents, in each case subject to the Orders, as applicable:

(a) Each Loan Party hereby covenants, represents and warrants that, upon entry of the Interim Order (and when applicable, the Final Order), its Obligations hereunder and under the other Credit Documents as applicable shall at all times (i) constitute an allowed Superpriority Claim against each of the Debtors on a joint and several basis, which will be payable from and have recourse to all pre and Post-Petition property of such Debtors and all proceeds thereof (excluding Avoidance Actions but including, subject to entry of a Final Order, Avoidance Proceeds), subject and subordinate in all respects to the Carve-Out, and any payments or proceeds on account of such Superpriority Claim shall be distributed in accordance with this Agreement and the Collateral Documents and (ii) be secured by a valid, binding, continuing, enforceable, fully-perfected senior security interest and Lien on all of the assets of the Debtors, whether currently existing or thereafter acquired, of the same nature, scope and type as the Collateral with the priorities set forth in the Orders.

(b) Except to the extent of the Carve-Out and the Orders, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including a case under Chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Required Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the Lenders. In no event shall the Lenders or the Prepetition Secured Parties (as defined in the Orders) be subject to (i) the "equities of the case" exception contained in section 552(b) of the

Bankruptcy Code (subject only to and effective upon entry of the Final Order), or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Collateral.

(c) Except for the Carve-Out and as otherwise set forth in the applicable Order and herein, the Superpriority Claims shall at all times be senior to the rights of any Loan Party that is a Debtor, any Chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any Chapter 7 trustee, or any other creditor (including, without limitation, Post-Petition counterparties and other Post-Petition creditors) in the cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 cases (if any of the cases are converted to cases under Chapter 7 of the Bankruptcy Code).

ARTICLE VI
NEGATIVE COVENANTS

So long as any Obligations (other than Unasserted Obligations) have not been Repaid in Full, no Loan Party shall, nor shall it permit any Subsidiary of a Loan Party directly or indirectly to do any of the following:

SECTION 6.01 LIENS.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than any of the following (collectively, "***Permitted Liens***"):

(a) any Lien (i) created in favor of any Lending Party under any Credit Document and (ii) in existence on the Closing Date securing Prepetition Note Obligations;

(b) any Lien existing on the date hereof and listed on **Schedule 6.01**;

(c) Liens for taxes, fees, assessments or other government charges or levies, either (A) not yet delinquent or (B) are the subject of Permitted Protests;

(d) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business;

(e) valid statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens;

(f) leases or subleases of real property granted in the ordinary course of Lead Borrower's and its Subsidiaries' business and leases, subleases, non-exclusive licenses or sublicenses of personal property (including, for the avoidance of doubt, non-exclusive licenses of Intellectual Property) granted in the ordinary course of Lead Borrower's and its Subsidiaries' business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

(h) Liens securing any overdraft and related liabilities arising from treasury, depository or cash management services or automated clearing house transfer of funds;

(i) Liens representing the interest or title of a lessor, licensor, sublicensor or sublessor;

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

(k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(l) Liens arising from the filing of any precautionary financing statement on operating leases covering the leased property;

(m) Liens on cash collateral securing Debt described in **Section 6.03(h)**, **6.03(i)**, and/or **6.03(j)**;

(n) customary Liens of any bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account or securities account;

(o) Liens granted pursuant to any Order (including Liens granted to provide adequate protection and the Carve-Out); and

(p) other Liens securing obligations in an aggregate amount not to exceed $100,000 at any time outstanding.

SECTION 6.02 INVESTMENTS.

Make any Investments or enter into any agreement to make Investments, except:

(a) Investments existing as of the date hereof and listed on **Schedule 6.02**;

(b) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Lead Borrower's and its Subsidiaries' business;

(c) Investments consisting of deposit accounts or securities accounts of the Lead Borrower and its Subsidiaries existing on the Closing Date, including cash and cash equivalents held therein;

(d) Investments (A) by Loan Parties in other Loan Parties and (B) by a Loan Party in Subsidiaries that are not Loan Parties in an aggregate amount not to exceed the minimum required to maintain the existence of such non-Loan Parties in accordance with past practice;

(e) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates in the ordinary course of business;

(f) Investments made in accordance with and specified in the Approved Budget; and

(g) other Investments in an aggregate amount not to exceed $100,000 at any time outstanding.

SECTION 6.03 DEBT.

Create, incur, assume or suffer to exist any Debt, except:

(a) Debt under the Credit Documents;

(b) Debt outstanding on the date hereof and listed on **Schedule 6.03** (other than any Prepetition Note Obligations);

(c) Prepetition Note Obligations;

(d) unsecured Debt to trade creditors incurred in the ordinary course of business;

(e) Debt incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Debt constituting an Investment permitted under **Section 6.02**;

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

(h) Debt arising from customary cash management and treasury services, and the honoring of a check, draft or similar instrument against insufficient funds or from the endorsement of instruments for collection or deposit, in each case, in the ordinary course of business;

(i) Debt consisting of letters of credit issued on behalf of the Lead Borrower or its Subsidiaries in the ordinary course of business;

(j) Debt incurred on credit cards, charge cards or similar products in the ordinary course of business;

(k) Guarantees by any Loan Party of Debt of another Loan Party otherwise permitted hereunder to be incurred by such Person;

(l) Debt incurred in accordance with the Approved Budget; and

(m) other unsecured Debt in an aggregate amount not to exceed $100,000 at any time.

SECTION 6.04 FUNDAMENTAL CHANGES.

(a) Engage in any material line of business other than a Related Business;

(b) Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all or any material portion of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(i) (A) any Loan Party that is a Debtor may merge with another Loan Party that is a Debtor; provided, that a Borrower must be the surviving entity of any such merger to which it is a party, (B) any Loan Party may merge with a Subsidiary of such Loan Party that is not a Loan Party so long as such Loan Party is the surviving entity of any such merger, and (C) any Subsidiaries of Loan Parties that are not themselves Loan Parties may merge with each other; and

(ii) any Subsidiary of a Loan Party may Dispose of all, or substantially all, of its assets (upon voluntary liquidation or otherwise) to such Loan Party or to another Subsidiary of a Loan Party; provided, that, (x) if the transferor in such a transaction is a Loan Party, then the transferee must be a Loan Party, (y) transferor in such transaction may not be a Borrower, and (z) if the transferor is a domestic Subsidiary, then the transferee must be a domestic Subsidiary; or

(c) in each case, without at least ten (10) days' prior written notice to Administrative Agent: (i) change its jurisdiction of organization; (ii) change its organizational type; (iii) change its legal name,

(iv) acquire any Equity Interests in any Person or form or incorporate any new Subsidiaries; or (v) change its classification/status for U.S. federal income tax purposes.

SECTION 6.05 DISPOSITIONS.

Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of inventory in the ordinary course of business;

(b) Dispositions of worn-out, surplus, or obsolete property that is, in the reasonable judgment of Lead Borrower, (i) no longer economically practicable to maintain or (ii) used or useful in the ordinary course of business of Lead Borrower or its Subsidiaries;

(c) to the extent constituting Dispositions, transactions permitted under **Section 6.01**, **6.02**, **6.03**, and/or **6.06**;

(d) Dispositions consisting of Lead Borrower's or its Subsidiaries' use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Credit Documents;

(e) Dispositions of non-exclusive licenses for the use of the property of Lead Borrower or its Subsidiaries in the ordinary course of business;

(f) Dispositions amongst Loan Parties or by non-Loan Parties to Loan Parties;

(g) Dispositions of immaterial assets in connection with the winding up of the Lead Borrower's and its Subsidiaries' operations at 126 East Oris Street, Compton, CA;

(h) Dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business;

(i) Dispositions of assets subject to an Event of Loss (including dispositions in lieu of condemnation);

(j) Dispositions made in accordance with the Approved Budget; and

(k) other Dispositions involving assets with a fair market value not to exceed $100,000 in the aggregate for all such Dispositions.

SECTION 6.06 RESTRICTED PAYMENTS; CERTAIN PAYMENTS OF DEBT.

(a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as it is permitted by law,

(i) Restricted Payments made in the ordinary course of business pursuant to the Driscoll Agreement, consistent with the Approved Budget or the applicable "first day" orders;

(ii) dividends and/or distributions made by any Subsidiary of Lead Borrower ratably on account of its Equity Interests; and

(iii) to the extent constituting Restricted Payments, the Loan Parties and their Subsidiaries may take the actions permitted by **Section 6.02**, **Section 6.04** and **Section 6.05**; or

(b) Make any mandatory, voluntary or optional payment or prepayment on account of, or optional redemption or acquisition for value of any portion of, any Debt that has been incurred prior to the Petition Date (other than (x) that arising under the Credit Documents in accordance with the provisions thereof, and/or (y) as permitted under the Orders).

SECTION 6.07 CHANGES RELATING TO DEBT OR MATERIAL CONTRACTS.

Directly or indirectly, amend, change, supplement or otherwise modify: (i) any agreement, instrument, document, indenture or other writing evidencing or concerning any Debt that has been contractually subordinated to the Obligations, if such modification would breach an applicable subordination agreement or other subordination terms applicable to such Debt; or (ii) any of the Material Contracts if the effect thereof, either individually or in the aggregate, could reasonably be expected to be adverse in any material respect to any of the Loan Parties or the Lending Parties.

SECTION 6.08 TRANSACTIONS WITH AFFILIATES.

Enter into any transaction of any kind with any Affiliate of a Loan Party, irrespective of whether in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary of such Loan Party as would be obtainable by such Person at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to:

(a) any indemnity provided for the benefit of directors (or comparable managers) of a Loan Party or one of its Subsidiaries so long as it has been approved by such Loan Party's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law,

(b) the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party or one of its Subsidiaries in the ordinary course of business and consistent with industry practice;

(c) transactions solely among the Loan Parties;

(d) transactions permitted under **Sections 6.02(d)**, **6.02(f)**, **6.03(f)** (to the extent referencing Investments pursuant to **Section 6.02(d)** or **Section 6.02(f)**), **6.03(l)**, **6.04(b)**, **6.05(f)**, **6.05(j)**, and/or **6.06** hereunder;

(e) transactions pursuant to the Credit Documents;

(f) payment of customary out-of-pocket costs and expenses of any future or current officers, directors, employees, or managers of the Lead Borrower and the other Subsidiaries; and

(g) transactions approved by the Bankruptcy Court for which the Required Lenders shall have provided prior written consent.

SECTION 6.09 BURDENSOME AGREEMENTS.

(a) Enter into any Contractual Obligation that limits the ability: (A) of any Subsidiary of a Loan Party to make Restricted Payments to such Loan Party or to otherwise transfer property to such Loan Party; (B) of any Loan Party or Subsidiary of a Loan Party to Guarantee the Debt of the Borrowers; (C) of any Loan Party or any Subsidiary thereof to create, incur, assume or suffer to exist Liens on property of such Person or (D) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided that the foregoing shall not apply to:

(i) restrictions imposed by law or contained in this Agreement or any Credit Documents;

(ii) customary provisions in leases, licenses and other agreements (including customary "net worth" provisions);

(iii) restrictions on cash and other deposits contained in any agreements entered into in the ordinary course of business consistent with past practices;

(iv) restrictions contained in any agreement in connection with any Disposition permitted by **Section 6.05**, provided that such restrictions apply only to the assets or Subsidiaries that are the subject of such Disposition;

(v) restrictions contained in (A) any agreement or instrument relating to Debt of any Subsidiary that is not a Loan Party permitted under **Section 6.03**, provided that such restrictions apply only to such Subsidiary and its Subsidiaries or (B) the Prepetition Note Obligations;

(vi) customary restrictions in respect of intellectual property contained in licenses or sublicenses of, or other grants of rights to use or exploit, such intellectual property; and

(vii) customary covenants in contracts of sale or merger or acquisition agreements; or

(b) pay salaries, bonuses, commissions, consultant fees or other compensation to any officer, director, management-level employee, equity holder or consultant of any Loan Party or any of its Subsidiaries, or any family member of any of the foregoing, in excess of the amounts set forth in the Specified Employment Agreement applicable thereto as in effect on the Closing Date or as otherwise disclosed in writing to the Lenders prior to the Closing Date, or amend, supplement, modify, waive or alter (or agree to do so) any of the Specified Employment Agreements in any material respect without the prior written approval of Required Lenders.

SECTION 6.10 CERTAIN GOVERNMENTAL REGULATIONS.

(a) Be or become subject at any time to any law, regulation, or list of any government agency (including the OFAC list) that prohibits or limits any Lending Party from making any loans or extensions of credit (including the Loans) to any Loan Party or from otherwise conducting business with any Loan Party, or (b) fail to provide documentary and other evidence of any Loan Party's identity as may be requested by any Lending Party at any time to enable such Lending Party to verify any Loan Party's identity or to comply with any applicable Law, including Section 326 of the Patriot Act, the Investment Company Act, and the FCPA.

SECTION 6.11 DISQUALIFIED EQUITY INTERESTS

(a) Issue any Disqualified Equity Interests, or (b) be or become liable in respect of any obligation (contingent or otherwise) to purchase, redeem, retire, acquire or make any other payment in respect of any Equity Interests of any Loan Party or any Subsidiary.

SECTION 6.12 CERTAIN AMENDMENTS.

The Loan Parties will not, and will not permit or cause any other Subsidiary to, without the consent of the Required Lenders, (a) in the case of the Loan Parties, amend, modify or change any provision of their respective Organizational Documents in a manner that is materially adverse to the interests of the Lenders under the Credit Documents or (b) in the case of the Loan Parties and their respective Subsidiaries, amend, modify or change, or permit the amendment, modification or changing of any documents in respect of the Debt that was outstanding on or prior to the Petition Date other than any amendment, modification or change either (i) expressly permitted under any Approved Bankruptcy Court Order or (ii) that is not adverse to the interests of the Lenders and the Borrowers in any material respect.

SECTION 6.13 FINANCIAL COVENANTS.

Lead Borrower covenants and agrees that:

(a) **Liquidity Covenant**. Commencing with the Friday of the first full week after the Petition Date and tested on each Friday thereafter, Borrower shall not permit Liquidity to be less than $500,000 as of such testing date; and

(b) **Budget Variance Covenant**. As of each Budget Variance Test Date, Lead Borrower shall not permit,

(i) for the Initial Two Week Budget Variance Testing Period, the net cash flow to be less than 80% of the forecasted net cash flow; and

(ii) for the Initial Three Week Budget Variance Testing Period, the Initial Four Week Budget Variance Testing Period and each Budget Variance Test Period thereafter, the net cash flow to be less than 85% of the forecasted net cash flow,

It is expressly understood and agreed that (x) to the extent that any Budget Variance Test Period encompasses a period that is covered in more than one Approved Budget, the applicable weeks from each applicable Approved Budget shall be utilized in making the calculations pursuant to this **Section 6.13** and (y) to the extent the net cash flow for any Budget Variance Test Period (as determined in accordance with this clause (y)) shall be greater than the net cash flow set forth in the applicable period in the applicable Approved Budget, such excess shall be deemed to increase the net cash flow for the immediately subsequent Budget Variance Test Period for all purposes under this Agreement.

SECTION 6.14 ADDITIONAL BANKRUPTCY MATTERS.

Subject to the Orders, the Loan Parties shall not, nor shall they permit any of its Subsidiaries to, without the Lenders' prior written consent, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Lenders with respect to the Collateral following the occurrence of an Event of Default.

ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01 EVENTS OF DEFAULT.

Each of the following shall constitute an event of default hereunder (each, an "***Event of Default***"):

(a) **Non-Payment**. Borrowers or any other Loan Party fails to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) (i) all or any portion of the Obligations consisting of fees or charges due Administrative Agent or Lenders, reimbursement of costs and expenses under **Section 9.04(a)**, or other amounts (other than any portion thereof consisting of principal or interest) constituting Obligations, and such failure continues for a period of three (3) Business Days, or (ii) all or any portion of the principal or interest on any of the Loans;

(b) **Specific Covenants**. (i) Borrowers or any other Loan Party or Subsidiary thereof fails to perform or observe (A) any term, covenant or agreement contained in any of **Section 5.02**, **Section 5.03(a)**, **Section 5.05(a)**, **Section 5.07**, **Section 5.10**, **Section 5.11**, **Section 5.12**, **Section 5.17**, **Section 5.18**, **Section 5.20**, **Section 5.21**, **Section 5.22**, **Section 5.23**, **Section 5.25** or **Article VI** or (B) any other term of any Credit Document which by its terms is incapable of cure or (ii) any Loan Party fails to perform or observe any term, covenant or agreement contained in **Article IV** of the Collateral and Guarantee Agreement; or

(c) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrowers or any other Loan Party herein, in any other Credit Document or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) when made or deemed made; or

(d) **Other Defaults**. (i) Any Loan Party fails to perform or observe with any term or condition contained in **Section 5.01,** and such failure continues for five (5) Business Days; or (ii) any Loan Party fails to perform or observe any other covenant or agreement (not specified in **Section 7.01(a)**, **Section 7.01(b)**, **Section 7.01(c)**, or **Section 7.01(d)(i)**) contained in any Credit Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(e) **Cross Default**. (i) any Loan Party or any Subsidiary of a Loan Party shall fail to pay any principal or interest under any Material Debt that is not otherwise subject to the automatic stay under section 362 of the Bankruptcy Code, when due and payable, after giving effect to any applicable grace period in the agreement or instrument evidencing such Material Debt or under which such Material Debt has been incurred, or (ii) any event or condition occurs that results in any Material Debt becoming due and payable or to be required to be prepaid, redeemed, purchased or defeased, in each case prior to its stated maturity by reason of any default, event of default or the like (however described) that is not otherwise subject to the automatic stay under section 362 of the Bankruptcy Code; or

(f) **Insolvency Proceedings, Etc**. Other than the Chapter 11 Cases, any Loan Party or any Subsidiary thereof (i) institutes or consents to the institution of any proceeding under any Bankruptcy Law, or makes an assignment for the benefit of creditors; (ii) applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) days; or (iii) is the subject of any proceeding under any Bankruptcy Law relating to any such Person or to all or any material part of its property that is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) days, or an order for relief is entered in any such proceeding; provided that the foregoing clauses (f)(i) through (f)(iii) shall not apply to the extent that (A) within five (5) Business Days after the commencement thereof, such case becomes jointly administered with the Chapter 11 Cases and (B) each of the Interim Order and/or Final Order (as applicable) are made applicable to such Subsidiary as a Guarantor hereunder on terms and conditions reasonably satisfactory to the Required Lenders; or

(g) **Judgments**. There is entered against any Loan Party or any Subsidiary thereof: (i) a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage); or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case: (A) enforcement proceedings are commenced by any creditor upon such judgment or order; or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, vacation, discharge or otherwise, is not in effect; provided that the foregoing clauses (h)(i) and (ii) shall not apply to any order fixing the amount of any claim in the Chapter 11 Cases; or

(h) **ERISA**. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(i) **Invalidity of Credit Documents**. Any Credit Document or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Repayment in Full of all of the Obligations and other than as a result of an action or inaction by Administrative Agent or any Lender, ceases to be in full force and effect other than in accordance with its terms; or any Loan Party contests in any manner in writing the validity or enforceability of any Credit Document or any provision thereof; or any Loan Party denies that it has any or further liability or obligation under any Credit Document, or purports to limit, revoke, terminate or rescind any Credit Document or any provision thereof; or

(j) **Impairment of Collateral**. Any Lien purported to be created by the Orders or any Collateral Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid, perfected, first-priority (except as otherwise expressly provided in this Agreement, the Orders or such Collateral Document) Lien in the assets covered thereby (except with respect to immaterial assets); or

(k) **Certain Actions.** Any Loan Party or any of its senior officers is criminally indicted or convicted of (i) a felony or (ii) violating any state or federal Laws (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that has resulted in, or could reasonably be expected to lead to, a forfeiture of any material property or any assets (including the Collateral) upon which such Loan Party has granted a Lien to Administrative Agent or the right to conduct a material part of its business; or

(l) **Material Adverse Effect**. There occurs a Material Adverse Effect; or

(m) **Guaranty**. If the obligation of any Guarantor under the guaranty contained in the Collateral and Guarantee Agreement is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty;

(n) **Change of Control**. There occurs a Change of Control; or

(o) **Milestones**. Any Loan Party shall fail to achieve any Milestone set forth on **Schedule 5.20**.

(p) **Bankruptcy Events**. The occurrence of any one or more of the following events:

(i) the Bankruptcy Court shall enter an order dismissing any of the Chapter 11 Cases, converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or providing for a change of venue with respect to such Chapter 11 Cases, which order, in each case, has not been reversed, stayed, or vacated within three (3) Business Days of the entry of such order, any Loan Party (or any Subsidiary) shall file a motion or other pleading seeking entry of such an order, in each case, without the prior written consent of the Required Lenders (which may be provided via email to Lead Borrower and the Lenders);

(ii) a trustee, a responsible officer or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) under Bankruptcy Code section 1104, or any similar person is appointed or elected in any of the Chapter 11 Cases, any Loan Party (or any Subsidiary thereof) applies for, consents to, or fails to contest in, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, which order, in each case, has not been reversed, stayed or vacated within three (3) Business Days of the entry of such order, in each case, without the prior written consent of the Required Lenders (which may be provided via email to Lead Borrower and the Lenders);

(iii) (A) the Bankruptcy Court shall enter an order, or any Loan Party (or any Subsidiary thereof) shall file an application, motion or other pleading seeking entry of an order, staying, reversing, amending, supplementing, vacating or otherwise modifying the Interim Order or the Final Order, or the Borrowers or any of their Subsidiaries shall apply for authority to do so without the prior written consent of the Required Lenders (in each case, which may be provided via email to Lead Borrower and the Lenders), as applicable, or (B) the Interim Order or the Final Order, as applicable, shall cease to be in full force and effect;

(iv) the Bankruptcy Court shall enter an order in any of the Chapter 11 Cases confirming a Chapter 11 Plan that is not an Approved Plan;

(v) (A) the Bankruptcy Court shall enter an order in any of the Chapter 11 Cases denying or terminating use of Cash Collateral by the Loan Parties that are Debtors; (B) the termination of the right of any Loan Party that is a Debtor to use any Cash Collateral under the Orders; or (C) any other event that terminates the Borrowers' right to use Cash Collateral and, in each case under this clause (v), the Debtors have not otherwise obtained authorization to use Cash Collateral pursuant to an order with the prior written consent of the Required Lenders (in each case which may be provided via email to Lead Borrower and the Lenders);

(vi) any of the Loan Parties or any of their Subsidiaries shall commence, join in, assist, support or otherwise participate as an adverse party in any suit or other proceeding against the Lenders (in each case, in their capacities as such) with respect to the Debtors' stipulations, admissions, agreements and releases contained in the Orders, the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Obligations or any other rights granted to the Lenders in the Orders or this Agreement or with respect to any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral, in each case, without the prior written consent of the Required Lenders (which may be provided via email to Lead Borrower and the Lenders); provided that the Debtors shall not be precluded from contesting whether an Event of Default has occurred and is continuing;

(vii) the Bankruptcy Court shall enter an order in any of the Chapter 11 Cases (other than any Approved Bankruptcy Court Order) granting authority to use Cash Collateral or to obtain financing under section 364 of the Bankruptcy Code (other than with respect to, or as permitted under, this Agreement);

(viii) the Bankruptcy Court shall enter an order in any of the Chapter 11 Cases (other than any Approved Bankruptcy Court Order) granting adequate protection to any other Person (which, for the avoidance of doubt, shall not apply to any payments made pursuant to any order acceptable to the Required Lenders (which may be provided via email to Lead Borrower and the Lenders));

(ix) the filing or support of any pleading by any Loan Party (or any of its Subsidiaries) seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (viii) above;

(x) other than as permitted by the Orders or any other Approved Bankruptcy Court Order, the Bankruptcy Court shall enter an order granting any superpriority administrative expense claim in the Chapter 11 Cases pursuant to section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of the Lenders, or the filing by any Loan Party of a motion or application seeking entry of such an order, in each case;

(xi) noncompliance by any Loan Party or any of its Subsidiaries with the terms of the Interim Order or the Final Order in any material respect;

(xii) any Loan Party shall file a motion, without the Required Lenders' written consent, seeking authority to sell all or substantially all of its assets or consummate a sale of assets of the Loan Parties that are Debtors other than in connection with an Approved Sale; or

(xiii) a default occurs under any lease or leases by a Loan Party as lessee of any real or personal property regarding a failure to make a Post-Petition payment under which the aggregate rentals payable under such lease or all such leases in the aggregate exceed the Threshold Amount, excluding (i) any defaults due to Borrowers' chapter 11 filing or (ii) any Bankruptcy Court approved rejection of such lease or leases under section 365 or 1110 of the Bankruptcy Code.

SECTION 7.02 RIGHTS AND REMEDIES.

(a) **Rights and Remedies Generally**. Upon the occurrence and during the continuation of an Event of Default, Administrative Agent may (and, at the instruction of the Required Lenders, shall), in addition to any other rights or remedies provided for hereunder or under any other Credit Document or by applicable law, without notice or demand, do any one or more of the following, in each case, subject to the Orders and the terms therein:

(i) terminate the Commitments (but if an Event of Default described in **Section 7.01(f)** occurs, all Commitments shall immediately be due and payable without any action by Administrative Agent or any other Lending Party);

(ii) declare all Obligations immediately due and payable (but if an Event of Default described in **Section 7.01(f)** occurs, all Obligations outstanding shall immediately be due and payable without any action by Administrative Agent or any other Lending Party);

(iii) stop advancing money or extending credit for Borrowers benefit under this Agreement or under any other agreement between any Loan Party and Administrative Agent or any other Lending Party;

(iv) settle or adjust disputes and claims directly with Account Debtors on accounts of any Loan Party for amounts on terms and in any order that Administrative Agent or Required Lenders consider advisable, notify any Person owing any Loan Party money of Administrative

Agent's Lien on such funds, and verify the amount of such account. Each Loan Party shall collect all payments in trust for Administrative Agent for the benefit of Lenders and, if requested by Administrative Agent (acting at the written direction of Required Lenders), immediately deliver the payments to Administrative Agent in the form received from the Account Debtor, with proper endorsement for deposit;

(v) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Lien upon the Collateral. Each Loan Party shall assemble the Collateral if Administrative Agent (acting at the written direction of Required Lenders) so requests and make it available as Administrative Agent (acting at the written direction of Required Lenders) so designates. Administrative Agent or any other Lending Party may enter the premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to Administrative Agent's Lien thereon and pay all expenses incurred. Each Loan Party grants Administrative Agent for the benefit of Lenders a license to enter and occupy any of its premises, without charge, to exercise any of Administrative Agent's or any other Lending Party's rights or remedies;

(vi) apply to the Obligations any (A) balances and deposits of any Loan Party that it holds, or (B) any amount held by Administrative Agent or any other Lending Party owing to or for the credit or the account of any Loan Party;

(vii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Administrative Agent is hereby granted a non-exclusive, royalty-free license or other right to use without charge, each Loan Party's or any of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, other Intellectual Property, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Administrative Agent's exercise of its rights under this **Section 7.02**, Each Loan Party's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Administrative Agent for benefit of Lenders;

(viii) place a "hold" on any account maintained with Administrative Agent and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(ix) demand and receive possession of the Books and Records of each Loan Party; and

(x) exercise all default rights and remedies available to any of the Lending Parties under the Credit Documents or at law or equity, including all default remedies provided under the UCC (including disposal of the collateral (including all Collateral) pursuant to the terms thereof).

(b) **Power of Attorney**. Each Loan Party hereby irrevocably appoints Administrative Agent as its lawful attorney-in-fact, to: (i) if such Loan Party refuses to, or fails timely to execute and deliver any of the documents required to be delivered by it pursuant to the terms hereof, sign the name of such Loan Party on any of such documents; (ii) at any time that an Event of Default has occurred and is continuing, endorse such Loan Party's name on any checks or other forms of payment or security, sign such Loan Party's name on any invoice or bill of lading for any account or drafts against Account Debtors or sign such Loan Party's name on any notices to Account Debtors; (iii) send requests for verification of Accounts; (iv) endorse each Loan Party's name on any collection item that may come into Administrative Agent's possession; (v) at any time that an Event of Default has occurred and is continuing, make, settle, and adjust all claims under such Loan Party's policies of insurance and make all determinations and decisions with respect to such policies of insurance; (vi) at any time that an Event of Default has occurred and is continuing, take control, in any manner, of any item of payment or proceeds relating to any Collateral; (vii) at any time that an Event of Default has occurred and is continuing, prepare, file, and sign such Loan Party's name to a proof of claim in bankruptcy or similar document against any Account Debtor, or to any notice of lien, assignment, or satisfaction of lien or similar document in connection with any of the Collateral; (viii) at any time that an Event of Default has occurred and is continuing, receive, open and dispose of all mail addressed to such Loan Party, and notify postal authorities to change the address for delivery thereof to such address as Administrative Agent (acting at the written direction of Required Lenders) may designate; (ix) at any time that an Event of Default has occurred and is continuing, use the information recorded on or contained in any data processing equipment, computer hardware, and software relating to the Collateral; (x) at any time that an Event of Default has occurred and is continuing, settle and adjust disputes and claims respecting the Accounts, Chattel Paper or General Intangibles directly with Account Debtors, for amounts and upon terms that Administrative Agent determines to be reasonable (acting at the written direction of Required Lenders), and Administrative Agent may cause to be executed and delivered any documents and releases that Administrative Agent (acting at the written direction of Required Lenders) determines to be necessary; (xi) at any time file UCC-3 assignments reflecting Administrative Agent as assignee of such Loan Party with respect to UCC-1 financing statements filed by such Loan Party in connection with Collateral; (xii) cause an Account Debtor's insurers to add Administrative Agent as loss payee under the relevant insurance policy; (xiii) at any time that an Event of Default has occurred and is continuing, pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (xiv) at any time that an Event of Default has occurred and is continuing, transfer any Collateral into the name of Administrative Agent for the benefit of Lenders or a third-party as the UCC permits; and (xv) do all other acts and things necessary, in Administrative Agent's determination (acting at the written direction of Required Lenders), to fulfill each Loan Party's obligations under this Agreement. Each Loan Party hereby appoints Administrative Agent as its lawful attorney-in-fact to sign such Loan Party's name on any documents necessary to perfect or continue the perfection of any security interest or other Lien in the Collateral regardless of whether an Event of Default has occurred and is continuing until all Obligations have been Repaid in Full (other than any contingent indemnification obligations arising out of facts and circumstances that are not reasonably identified by Administrative Agent, any Lender, or any Participant at the time of such repayment). Administrative Agent's foregoing appointment as the attorney-in-fact for each Loan Party, and all of Administrative Agent's or Required Lenders' rights and powers, being coupled with an interest, are irrevocable until all Obligations have been fully paid and performed when due (as applicable).

(c) **Application of Funds**.

(i) No Loan Party shall have the right to specify the order or the accounts to which Administrative Agent shall allocate or apply any payments required to be made by any Loan Party to Administrative Agent on behalf of Lenders or otherwise received by Administrative Agent on behalf of Lenders under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(ii) Subject to the Orders, all payments, prepayments, and proceeds of collateral (including the Collateral) and any other amounts received on account of the Obligations shall be applied by Administrative Agent until exhausted in the following order:

(A) *first*, to Administrative Agent and Collateral Agent, ratably, to pay all fees, costs, expenses and indemnification payments then due to Administrative Agent and Collateral Agent under the Credit Documents;

(B) *second*, *pro rata*, to the Lenders according to their respective Percentage Shares, to pay all accrued but unpaid interest and fees (including the Premiums and interest at the Default Rate) on the Loans owing to Lenders;

(C) *third*, *pro rata*, to the Lenders according to their respective Percentage Shares, to pay the Outstanding Amount of the Loans until such time as the Outstanding Amount of the Loans has been Paid in Full; and

(D) *fourth*, *pro rata*, to Administrative Agent and the other Lending Parties, to pay all remaining Credit Outstandings and other Obligations owing to Administrative Agent or any other Lending Party.

After payment in full of all Obligations (other than Unasserted Obligations), any surplus remaining shall be paid to Borrowers or other Persons legally entitled thereto; if any deficiency exists, Borrowers shall remain liable to Administrative Agent and the other Lending Parties for such deficiency. If Administrative Agent or any Lending Party, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of any collateral (including the Collateral), Administrative Agent or such Lending Party, as applicable, shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Administrative Agent or such Lending Party of cash therefor.

(d) **Collateral Agent's Liability for Collateral**. So long as Collateral Agent and other Lending Parties comply with reasonable banking practices regarding the safekeeping of any collateral the subject of the Collateral Documents, Collateral Agent and the other Lending Parties shall not be liable or responsible for: (i) the safekeeping of all or any such collateral; (ii) any loss or damage to all or any such collateral; (iii) any diminution in the value of all or any such collateral; or (iv) any act or default of any carrier, warehouseman, bailee, or other Person. The Loan Parties bear all risk of loss, damage or destruction of any collateral the subject of the Collateral Documents.

(e) **No Waiver**. Administrative Agent's or any Lending Party's failure, at any time or times, to require strict performance by any Loan Party of any provision of this Agreement or any other Credit Document shall not waive, affect, or diminish any right of Administrative Agent or such Lending Party thereafter to demand strict performance and compliance herewith or therewith. Administrative Agent and the other Lending Parties have all rights and remedies provided under the UCC, by law, or in equity. Any amounts paid by Administrative Agent or any other Lending Party on any Loan Party's behalf as provided herein are expenses reimbursable under **Section 9.04** and shall bear interest at the highest interest rate then applicable to any of the Obligations and shall be secured by the collateral the subject of the Collateral Documents. No payments by Administrative Agent or any other Lending Party shall be deemed an agreement to make similar payments in the future or a waiver of any Event of Default by Administrative Agent or any other Lending Party.

(f) **Right to Appoint Receiver**. Upon the occurrence of an Event of Default and at all times thereafter, subject to the Orders, Administrative Agent shall be entitled to the immediate appointment of a receiver for all or any part of the Collateral, whether or not waste or deterioration of the Collateral has occurred; whether or not there is a risk that the Collateral is in danger of being lost, removed, or materially injured; and whether or not other arguments based on equity or pursuant to statute would justify the appointment. Administrative Agent and the Loan Parties agree and consent that said receiver shall be directed to manage, protect, preserve, sell and otherwise dispose of all or any portion of the Collateral and continue the operation of the business of the Loan Parties, and to collect all revenues and profits thereof and apply the same to the payment of all expenses and other charges of such receivership, including the compensation of the receiver, and to the payment of the Loans and other fees and expenses due hereunder and under the Credit Documents as aforesaid until a sale or other disposition of such Collateral shall be finally made and consummated. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE, EACH LOAN PARTY HEREBY IRREVOCABLY AND FOR VALUABLE CONSIDERATION CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AS PROVIDED ABOVE. EACH LOAN PARTY (I) GRANTS SUCH WAIVER AND CONSENT KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, (II) ACKNOWLEDGES THAT (A) THE UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY ADMINISTRATIVE AGENT IN CONNECTION WITH THE ENFORCEMENT OF THE LENDERS' AND ADMINISTRATIVE AGENT'S RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER CREDIT DOCUMENTS, AND (B) THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE LENDERS TO MAKE THE LOANS TO BORROWERS; AND (III) AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH ADMINISTRATIVE AGENT AND THE LENDERS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL.

(f) **Remedies Cumulative**. The rights and remedies of Administrative Agent and the other Lending Parties under this Agreement, the other Credit Documents, and all other agreements shall be cumulative. In addition to the other rights and remedies set forth in this Agreement or in any other Credit Documents, Administrative Agent and the other Lending Parties shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by Administrative Agent or any other Lending Party of one right or remedy shall be deemed an election, and no waiver by Administrative Agent or any other Lending Party of any Default or Event of Default shall be deemed a continuing waiver. No delay by Administrative Agent or any other Lending Party shall constitute a waiver, election, or acquiescence by it.

ARTICLE VIII
ADMINISTRATIVE AGENT AND COLLATERAL AGENT

SECTION 8.01 APPOINTMENT AND AUTHORIZATION OF ADMINISTRATIVE AGENT.

Each Lender hereby irrevocably appoints GLAS USA LLC to act on its behalf as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and authorizes Administrative Agent and Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent and Collateral Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article VIII** are solely for the benefit of Lending Parties, and neither Borrowers nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions.

SECTION 8.02 RIGHTS AS A LENDER.

If the Person serving as Administrative Agent hereunder is also a Lender, such Person shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for, make equity investments in, and generally engage in any kind of business with any Loan Party or any Subsidiary or Affiliate of any Loan

Party as if such Person were not Administrative Agent hereunder and without any duty to account therefor to any other Lending Party.

SECTION 8.03 EXCULPATORY PROVISIONS.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and the duties of Administrative Agent hereunder are administrative in nature. Use of the term "agent" in this Agreement or in any other Credit Documents (or any other similar term) with reference to Administrative Agent does not connote (and is not intended to connote), any fiduciary or other implied (or express) obligation arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between the contracting parties. Without limiting the generality of the foregoing, Administrative Agent:

(a) **No Fiduciary Duties**. Shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) **No Obligations Regarding Certain Actions**. Shall not have any duty to take any discretionary action or exercise any discretionary powers (including any consent, approval, acceptance, election, designation, use of judgment or expression of satisfaction) contemplated hereby or by the other Credit Documents unless directed in writing to take such discretionary action or exercise such discretionary power by the Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in any other Credit Documents with respect to such discretionary action or discretionary power); provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Credit Document or applicable Laws (including any action that may be in violation of the automatic stay or that may effect a forfeiture, modification or termination of a property interest in violation of any applicable bankruptcy/insolvency Laws); provided further, that, notwithstanding anything to the contrary contained herein, in any other Credit Document or elsewhere, each Lender and each Loan Party hereby acknowledges and agrees that (i) in the case of any agreement, document, instrument, matter or other item that is required under the terms of this Agreement or any other Credit Document to be consented or agreed to, approved by, determined by, selected by, or acceptable or satisfactory to, Administrative Agent (whether subject to a reasonableness standard or otherwise) (each, an "***Agent Required Approval Item***"), Administrative Agent shall withhold its consent, agreement or approval to, its determination or selection of, or its acceptance or satisfaction with, or (if applicable) its signature to, such Agent Required Approval Item unless and until Administrative Agent has received a written direction (which may be by e-mail) from the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other applicable Credit Document) directing it to (x) consent or agree to or approve, or to select or indicate its acceptance or satisfaction with, such Agent Required Approval Item and (y) if applicable, execute and deliver (or take any other applicable action with respect to) such Agent Required Approval Item (such written direction being referred to herein as an "***Approval Direction***") and (ii) neither Administrative Agent nor any of its Related Parties shall have any liability to any Lender, any Loan Party or other Person as a result of the Administrative Agent withholding its consent or approval to, its selection of, or its acceptance or satisfaction with, or (if applicable) its signature to, any Agent Required Approval Item in the absence of an Approval Direction in respect thereof (and the provisions of this paragraph shall be in addition to, and not in limitation of, the other exculpatory provisions set forth herein or any other Credit Document);

(c) **Disclosure Obligations**. Shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity;

(d) **Limitation on Liability**. Shall not be liable for any action taken or not taken by it: (i) with the consent or at the request of Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 7.02** and **Section 9.01**); or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment. Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default, unless and until a Loan Party or a Lending Party provides written notice to Administrative Agent describing such Default or Event of Default and stating that such notice is a "Notice of Default". Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into: (A) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document; (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith; (C) 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; (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document; or (E) the satisfaction of any condition set forth in **Article III** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent;

(e) **Force Majeure**. Shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder or any other Credit Document by reason of any occurrence beyond the control of Administrative Agent (including any act or provision of any present or future Law or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, epidemic, pandemic or quarantine, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility);

(f) **No Risk of Funds**. Shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of its duties under the Credit Documents or in the exercise of any of its rights or powers under this Agreement or any other Credit Document; and

(g) **Compliance With Law**. Notwithstanding any other provision of the Agreement or any other Credit Document, shall be entitled to take any action or refuse to take any action which it regards as necessary for it to comply with any applicable Law.

SECTION 8.04 RELIANCE BY ADMINISTRATIVE AGENT.

Administrative 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. Administrative 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 the Loans that by its terms must be fulfilled to the satisfaction of a specified Lending Party, Administrative Agent may presume that such condition is satisfactory to such Lending Party, unless Administrative Agent shall have received notice to the contrary from such Lending Party prior to the making of the Loans. Administrative Agent may consult with legal counsel (who may be counsel for any Loan Party or any Lender), independent accountants and other experts it selects and shall not be liable for any action it takes or does not take in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05 DELEGATION OF DUTIES.

Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents it appoints. Administrative 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 VIII** shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the administration and/or syndication of the credit facilities provided for herein, as well as activities as Administrative Agent. Administrative 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, non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents. Without limiting the foregoing, any Person into which Administrative Agent in its individual capacity is merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation which Administrative Agent in its individual capacity is party, or any Person to which substantially all of the corporate trust or agency business of Administrative Agent in its individual capacity is transferred, shall be Administrative Agent under this Agreement without further action.

SECTION 8.06 RESIGNATION OF ADMINISTRATIVE AGENT.

Administrative Agent may at any time give notice of its resignation to Lending Parties and Lead Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, with, unless an Event of Default exists, the consent of Lead Borrower (which consent shall not be unreasonably withheld, conditioned or delayed), to appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may (but shall not be obligated to) on behalf of Lending Parties, appoint a successor Administrative Agent meeting the qualifications set forth in this **Section 8.06**; provided that, if Administrative Agent shall notify Lending Parties and Lead Borrower that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any Collateral held by Administrative Agent on behalf of any Lending Party under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed, but shall be entitled to apply to a court of competent jurisdiction for the appointment of a successor Administrative Agent or for other appropriate relief, with the costs and expenses (including its attorneys' fees and expenses) incurred by Administrative Agent in connection with such proceeding to be paid by the Loan Parties) and (b) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lending Party directly, until such time as Required Lenders appoint a successor Administrative Agent as provided for in this **Section 8.06**. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent (other than any rights to indemnity payments and expense reimbursement owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided in this **Section 8.06**). The fees payable by Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Credit Documents, the provisions of this **Article VIII** and **Section 9.04**, as well as any provisions providing for exculpation, immunity, indemnification or payment of fees and expenses of Administrative Agent under any other Credit Document, shall continue in effect for the benefit of such retiring Administrative 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 Administrative Agent was acting as Administrative Agent.

SECTION 8.07 NON-RELIANCE ON ADMINISTRATIVE AGENT AND OTHER LENDERS.

Each Lending Party acknowledges that it has, independently and without reliance upon Administrative Agent, any other Lending Party 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 Lending Party also acknowledges that it will, independently and without reliance upon Administrative Agent, any other Lending Party 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 Credit Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08 ADMINISTRATIVE AGENT MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of the Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on any Loan Party) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise: (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lending Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of Lending Parties and their respective agents and counsel and all other amounts due Lending Parties under **Sections 2.04**, **Section 2.09** and **Section 9.04**) allowed in such judicial proceeding; and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lending Party to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Section 2.09** and **Section 9.04**. Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lending Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lending Party or to authorize Administrative Agent to vote in respect of the claim of any Lending Party in any such proceeding.

SECTION 8.09 GUARANTY MATTERS

Each Lending Party hereby: (a) irrevocably authorizes Administrative Agent to release any Guarantor from its obligations under a Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder unless (1) the primary purpose of such transaction was to evade the obligations under the applicable Guaranty or (2) the transaction was not consummated on an arms' length basis with an unaffiliated third party; and (b) agrees that, upon request by Administrative Agent at any time, it will confirm in writing Administrative Agent's authority to release any such Guarantor pursuant to this **Section 8.09**, upon which Administrative Agent may conclusively rely.

SECTION 8.10 COLLATERAL AND OTHER MATTERS

(a) **Directions by Lenders**. Each Lender hereby irrevocably authorizes and directs Administrative Agent: (i) to enter into the Collateral Documents for the benefit of such Person; (ii) to release any Lien on any property granted to or held by Collateral Agent under any Credit Document: (A) upon termination of the Commitments and payment in full of all Obligations (other than Unasserted Obligations); (B) that is sold or to be sold as part of or in connection with any Disposition permitted hereunder or under any other Credit Document; (C) subject to **Section 9.01**, if approved, authorized or ratified in writing by Required Lenders; or (D) in connection with any foreclosure sale or other disposition of any collateral the subject of any Collateral Document after the occurrence of an Event of Default, including pursuant to Section 363 of the Bankruptcy Code; (iii) to consent to the sale, credit bid, or purchase (either directly or indirectly through one or more entities) of all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code; (iv) to credit bid or purchase (either directly or indirectly through one or more entities, including any special purpose vehicle or bidding entity) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, or any sale or other disposition thereof conducted under the provisions of the Bankruptcy Code, including pursuant to Section 363 of the Bankruptcy Code; and (v) to credit bid or purchase (either directly or indirectly through one or more entities, including any special purpose vehicle or bidding entity) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Administrative Agent or Collateral Agent in accordance with applicable Law in any judicial action or proceeding or by the exercise of any legal or equitable remedy, including any sale thereof conducted under the provisions of the Bankruptcy Code, pursuant to Section 363 of the Bankruptcy Code to otherwise. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Administrative Agent or Collateral Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Administrative Agent or Collateral Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of any entities (including any special purpose vehicle or bidding entity) that are used to consummate such credit bid or purchase) and (ii) in the case of any credit bid or purchase that is made indirectly through one or more entities, including any special purpose vehicle or bidding entity, notwithstanding anything to the contrary herein, including **Section 9.01** and **Section 9.06**, or any other Loan Document, the Administrative Agent and Collateral Agent are authorized to transfer any Obligations that are used for such credit bid to such entity (including any special purpose vehicle or bidding entity) for the purpose of consummating such credit bid without the requirement to comply with **Section 9.06** or any other requirement in the Loan Documents. Upon request by Administrative Agent at any time, each Lender will confirm in writing Administrative Agent's and Collateral Agent's authority to transfer Obligations in connection with any credit but or purchase to any entities (including any special purpose vehicle or bidding entity) and/or to release or subordinate its interest in particular types or items of collateral that are the subject of any Collateral Document pursuant to this **Section 8.10**. Notwithstanding the foregoing, Administrative Agent and Collateral Agent shall not take any actions to enforce its rights with respect to or foreclose upon any Collateral except at the direction of Required Lenders; provided that if any such action is prohibited by any court order or applicable law, Administrative Agent and Collateral Agent shall not be obligated to take such action until authority to do so is obtained. All decisions with respect to the type of action which is to be commenced by Administrative Agent or Collateral Agent with respect to enforcement against or foreclosure upon any Collateral shall be made by, and all actions with respect to prosecution and settlement of any such action shall require the direction of Required Lenders, and Administrative Agent or Collateral Agent shall not be required to take any such action in the absence of any such direction.

(b) **Certain Actions by Collateral Agent**. Subject to **Section 8.10(a)(ii)**, Collateral Agent shall (and is hereby irrevocably authorized by each Lender to) execute such documents as may be necessary to evidence the release or subordination of Liens granted to Collateral Agent herein or pursuant hereto upon the applicable collateral; provided that: (i) Collateral Agent shall not be required to execute any such document on terms that, in Collateral Agent's opinion, would expose Collateral Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty; and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrowers or any other Loan Party in respect of) all interests retained by Borrowers or any other Loan Party, including the proceeds of the sale, all of which shall continue to constitute part of the collateral the subject of the Collateral Documents. In the event of any sale or transfer of any collateral the subject of any of the Collateral Documents, or any foreclosure with respect to any of the collateral the subject of any of the Collateral Documents, Collateral Agent shall be authorized to deduct all expenses reasonably incurred by Collateral Agent from the proceeds of any such sale, transfer or foreclosure.

(c) **No Obligations Regarding Certain Actions**. Neither Administrative Agent nor Collateral Agent shall have any obligation whatsoever to any Lending Party, Loan Party or any other Person to assure that all or any of the collateral the subject of the Collateral Documents exists or is owned by Borrowers or any other Loan Party or is cared for, protected or insured or that the Liens granted to Collateral Agent herein or in any of the Collateral Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Administrative Agent or Collateral Agent in this **Section 8.10** or in any of the Collateral Documents, it being understood and agreed that in respect of the collateral the subject of the Collateral Documents, or any act, omission or event related thereto, Administrative Agent and Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, if Administrative Agent or Collateral Agent has an interest in the collateral the subject of the Collateral Documents by virtue of being one of the Lending Parties. For the avoidance of doubt, nothing herein shall require Administrative Agent or Collateral Agent to file financing statements or continuation statements, or be responsible for perfecting or maintaining the security interests purported to be created in any Collateral for the benefit of the Lending Parties (except for the safe custody by Administrative Agent or Collateral Agent of any Collateral in its possession and the accounting for moneys actually received by it hereunder).

(d) **Appointment of Lending Parties as Agents**. Each Lending Party hereby appoints each other such Person as agent for the purpose of perfecting Administrative Agent's or such Person's security interest in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession. Should any such Person (other than Collateral Agent) obtain possession of any collateral the subject of the Collateral Documents, such Person shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor, shall deliver such collateral to Collateral Agent or in accordance with Collateral Agent's instructions.

(e) **No Clean Up of Hazardous Materials**. In the event that Administrative Agent or Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which in its sole discretion may cause it to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("***CERCLA***"), 42 U.S.C. §9601, et seq., or otherwise cause it to incur liability under CERCLA or any other Environmental Law, Administrative Agent and Collateral Agent reserve the right, instead of taking such action, to either resign as Administrative Agent or Collateral Agent, as applicable, in accordance with **Section 8.06** or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Except for such claims or actions arising directly from the gross negligence or willful misconduct of Administrative Agent or Collateral Agent, Administrative Agent and Collateral Agent shall not be liable to any Person for any Environmental Claims or Environmental Liability by reason of Administrative Agent's or Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of Hazardous Materials into the environment. If at any time after any foreclosure on the Collateral (or a transfer in lieu of foreclosure) upon the exercise of remedies in accordance with any Credit Document it is necessary or advisable to take possession, own, operate or manage any portion of any Collateral by any Person other than Borrowers, Administrative Agent may appoint an appropriately qualified Person to possess, own, operate or manage such Collateral.

(f) **Rights of Collateral Agent**. Without limiting any provisions of this **Section 8.10** or of any other Credit Document, all rights, privileges, protections, immunities and benefits provided to Administrative Agent hereunder, including its rights to indemnification, are extended to, and shall be enforceable by, Collateral Agent.

SECTION 8.11 CERTAIN DISTRIBUTIONS

Notwithstanding anything to the contrary in this Agreement or any other Credit Document, the Administrative Agent shall not, in the exercise of any remedies hereunder (including, without limitation, the enforcement of any security interest or lien, any foreclosure, or the acceptance of collateral in satisfaction or the Obligations), or in connection with any insolvency, bankruptcy, dissolution, liquidation, reorganization or similar proceeding, take any action (including consenting to or supporting any plan of reorganization or similar arrangement) that would result in SVF II Pacific (DE) LLC receiving any property or asset other than cash or debt, in each case, without the prior written consent of SVF II Pacific (DE) LLC (to be granted or withheld in its sole discretion).

ARTICLE IX
GENERAL PROVISIONS

SECTION 9.01 AMENDMENTS, ETC.

No amendment or waiver of any provision of this Agreement or any other Credit Document, and no consent to any departure by Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by Required Lenders (or Administrative Agent at the written direction of Required Lenders) (such direction may be by electronic means) and Lead Borrower or the applicable Loan Party, as the case may be, with receipt acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; <u>provided</u> that no such amendment, waiver or consent shall:

(i) Unless in writing and signed by Lead Borrower and by any such Lender as to whom such amendment, waiver or consent is intended to apply, with receipt acknowledged by Administrative Agent, do any of the following:

(A) increase, or extend the expiry of, the Commitment of any Lender (or reinstate any such Commitment to the extent terminated pursuant to **Section 7.02**) without the written consent of such Lender;

(B) postpone or delay any date fixed by this Agreement or any other Credit Document for any payment of principal, interest, the Premiums, fees or other amounts due to any Lender hereunder or under any other Credit Document, including any prepayments specified under **Section 2.03**, or reduce the amount due to any Lender on any such date, in each case without the written consent of such Lender;

(C) reduce or forgive the principal of, or the rate of interest or the Premiums specified herein on, any or all of the Loans or other amounts payable to any Lender hereunder or under any other Credit Document, in each case without the written consent of such Lender;

(D) amend any provision herein providing for consent or other action by Required Lenders without the written consent of all Lenders directly and adversely affected thereby; or

(E) subordinate, or have the effect of subordinating, (1) the Obligations hereunder in right of payment to any other Debt, or (2) the Liens securing the Obligations to Liens securing any other Debt without the written consent of all Lenders directly affected thereby; or

(ii) Unless in writing and signed by all Lenders and Lead Borrower, with receipt acknowledged by Administrative Agent, do any of the following:

(A) amend this **Section 9.01**, **Section 2.03(d)**, **Section 2.09** or **Section 7.02(c)** or any provision herein providing for consent or other action by all Lenders;

(B) release, compromise or subordinate all or any substantial portion of the collateral the subject of the Collateral Documents and securing the Obligations, except as otherwise expressly provided herein or in any of the Collateral Documents, or amend the definition of the obligations secured by any of the Collateral Documents;

(C) increase the Commitments;

(D) release, compromise, subordinate or terminate any of the Guaranties except as otherwise expressly provided herein or in any of the Credit Documents;

(E) amend the definition of "***Scheduled Maturity Date***" contained in **Section 1.01**;

(F) amend the definition of "***Required Lenders***" contained in **Section 1.01**; or

(G) amend **Section 9.06(b)(v)**;

provided further that, notwithstanding anything to the contrary contained herein: (1) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to such Lenders as are otherwise required by this **Section 9.01**, affect the rights or duties of Administrative Agent under this Agreement or any other Credit Document; (2) no consent of Lead Borrower shall be required with respect to any amendment or waiver described in **Section 9.01(i)(D)**, **Section 9.01(ii)(A)** or **Section 9.01(ii)(F)**, if at the time of such amendment or waiver a Default or Event of Default exists; (3) any amendment, waiver, or consent with respect to any provision of this Agreement or any other Credit Document that relates only to the relationship of the Lending Parties among themselves, and that does not affect the rights or obligations of the Loan Parties (or any of them), shall not require consent by, or the agreement of, any Loan Party; (4) Administrative Agent, at the direction of the Required Lenders, and Lead Borrower may amend any Credit Document without the consent of any other party in order to correct technical errors, omissions or inconsistencies within or between the Credit Documents; and (5) the Administrative Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

SECTION 9.02 NOTICES; ELECTRONIC COMMUNICATIONS.

(a) **Notices Generally**. Except as provided in **Section 9.02(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, sent by facsimile transmission or sent by approved electronic communication in accordance with **Section 9.02(b)**, as follows:

(i) if to Lead Borrower, any other Loan Party or Administrative Agent, to the address, facsimile number or e-mail address specified for such Person on **Schedule 9.02**; and

(ii) if to any Lender, to the address, facsimile number or e-mail address specified in its Administrative Detail Form.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, and notices sent by facsimile transmission or by means of approved electronic communication 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); provided that notices delivered through electronic communications to the extent provided by **Section 9.02(b)** shall be effective as provided in such subsection (b).

(b) **Electronic Communications**.

(i) Each party hereto agrees that notices and other communications to it hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites); provided that the foregoing shall not apply to notices to any Lender pursuant to **Article II** if such Lender has notified Administrative Agent that it is incapable of receiving notices under **Article II** by electronic communication; provided further that, as of the Closing Date, each Lender which is a party hereto confirms that it is capable of receiving notices under **Article II** by electronic communication. In furtherance of the foregoing, each Lender hereby agrees to notify Administrative Agent in writing, on or before the date such Lender becomes a party to this Agreement, of such Lender's e-mail address to which a notice may be sent (and from time to time thereafter to ensure that Administrative Agent has on record an effective e-mail address for such Lender).

Unless Administrative 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 (A) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each Loan Party hereby acknowledges that: (A) Administrative Agent may make Specified Materials available to Lending Parties by posting some or all of the Specified Materials on an Electronic Platform; (B) the distribution of materials and information through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with any such distribution; (C) the Electronic Platform is provided and used on an "AS IS," "AS AVAILABLE" basis; and (D) neither Administrative Agent nor any of its Affiliates warrants the accuracy, completeness, timeliness, sufficiency or sequencing of the Specified Materials posted on the Electronic Platform.

ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND ITS AFFILIATES, EXPRESSLY AND SPECIFICALLY DISCLAIMS, WITH RESPECT TO THE ELECTRONIC PLATFORM, DELAYS IN POSTING OR DELIVERY, OR PROBLEMS ACCESSING THE SPECIFIED MATERIALS POSTED ON THE ELECTRONIC PLATFORM, AND ANY LIABILITY FOR ANY LOSSES, COSTS, EXPENSES OR LIABILITIES THAT MAY BE SUFFERED OR INCURRED IN CONNECTION WITH THE ELECTRONIC PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSES, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE ELECTRONIC PLATFORM.

(iii) Each Lender hereby agrees that notice to it in accordance with **Section 9.02(b)(i)** specifying that any Specified Materials have been posted to the Electronic Platform shall, for purposes of this Agreement, constitute effective delivery to such Lender of such Specified Materials. EACH LENDER: (A) ACKNOWLEDGES THAT THE SPECIFIED MATERIALS, INCLUDING INFORMATION FURNISHED TO IT BY ANY LOAN PARTY OR ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THE CREDIT DOCUMENTS, MAY INCLUDE MATERIAL, NON-PUBLIC INFORMATION CONCERNING THE LOAN PARTIES AND THEIR RESPECTIVE SUBSIDIARIES OR AFFILIATES OR THEIR RESPECTIVE SECURITIES; AND (B) CONFIRMS THAT: (1) IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL, NON-PUBLIC INFORMATION; (2) IT WILL HANDLE SUCH MATERIAL, NON-PUBLIC INFORMATION IN ACCORDANCE WITH SUCH PROCEDURES AND APPLICABLE LAWS, INCLUDE FEDERAL AND STATE SECURITIES LAWS; AND (3) TO THE EXTENT IT HAS SUCH A PERSON, IT HAS IDENTIFIED IN ITS ADMINISTRATIVE DETAIL FORM A CONTACT PERSON WHO MAY RECEIVE SPECIFIED MATERIALS THAT MAY CONTAIN MATERIAL, NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAWS.

(c) **Change of Address, Etc**. Lead Borrower and Administrative Agent may change their respective address(es), facsimile number(s) or e-mail address(es) for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address(es), facsimile number(s) or e-mail address(es) for notices and other communications hereunder by notice to Lead Borrower and Administrative Agent.

(d) **Reliance by Lending Parties**. Lending Parties shall be entitled to rely and act upon any notices purportedly given by or on behalf of any Loan Party even if: (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein; or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Loan Party shall indemnify each Indemnitee from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Loan Party. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03 NO WAIVER; CUMULATIVE REMEDIES.

No failure by Administrative Agent or any other Lending Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; no single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 9.04 EXPENSES; INDEMNITY; DAMAGE WAIVER.

(a) **Costs and Expenses**. Borrowers shall pay (i) any and all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent, Lenders and their respective Affiliates, including without limitation (A) any and all reasonable fees, charges and disbursements, whether arising prior to or following the Petition Date, of counsel for Administrative Agent and Collateral Agent (including the reasonable fees and out-of-pocket expenses of Moses Singer LLP and, if necessary, of one local counsel to the applicable parties or groups in any relevant jurisdiction and, solely in the case of an actual or perceived conflict of interest and to the extent notice thereof is provided to the Lead Borrower, one additional firm of outside legal counsel to the applicable parties or groups), in connection with (1) this Agreement and the other Credit Documents, (2) the administration of the credit facilities provided for herein, (3) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Credit Documents or any amendments, modifications or waivers of, or consents relating to, the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (4) the enforcement or protection of their rights in connection with this Agreement or the Credit Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (5) any workout, restructuring or negotiations in respect of any Obligations, (B) any and all reasonable fees, charges and disbursements arising from, related to or otherwise incurred in connection with the Chapter 11 Cases, whether arising prior to or following the Petition Date, of Davis Polk & Wardwell LLP, as legal counsel to certain Lenders and their Affiliates, (C) any and all reasonable fees, charges and disbursements arising from, related to or otherwise incurred in connection with the Chapter 11 Cases, whether arising prior to or following the Petition Date, of Sullivan & Cromwell LLP as legal counsel to certain Lenders and their Affiliates, (D) the reasonable fees, charges and disbursements arising from, related to or otherwise incurred in connection with the Chapter 11 Cases, whether arising prior to or following the Petition Date, of Porter Hedges LLP as legal counsel to certain Lenders, (E) all reasonable out-of-pocket expenses incurred in connection with appraisers, (F) all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (G) all reasonable out-of-pocket expenses incurred in connection with environmental site assessments; and (ii) all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent or any other Lending Party or any Affiliate of any of them after the occurrence and during the continuance of an Event of Default.

(b) **Indemnification by Loan Parties**. Each Loan Party shall indemnify each Indemnitee against, and hold harmless each Indemnitee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of counsel for any Indemnitee (including the reasonable fees and out-of-pocket expenses of (i) Moses Singer LLP, as counsel to Administrative Agent and Collateral Agent, (ii) Davis Polk & Wardwell LLP as counsel to certain Lenders,

(iii) Sullivan & Cromwell LLP as counsel to certain Lenders, and (iv) Porter Hedges LLP as local counsel to certain Lenders)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any document, agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of any transactions contemplated hereby, (ii) any Loan or the use or proposed use of the proceeds therefrom; or, in the case of Administrative Agent (and any sub-agent thereof) and its Affiliates only, the administration of this Agreement and the other Credit Documents, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Claim or Environmental Liability related to the operations of any Loan Party, (iv) any claims of, or amounts paid by any Lending Party to, a Collateral Account bank or other Person which has entered into a control agreement with any Lending Party hereunder or (v) 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 Borrowers or any other Loan Party or Subsidiary, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; <u>provided</u> 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 non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) without limiting **Section 8.03(d)**, result from a claim brought by Borrowers against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if a Borrower has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of a Borrower and that is brought by an Indemnitee against another Indemnitee (other than against Administrative Agent or Collateral Agent in their capacities as such). This **Section 9.04** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, liabilities or related expenses arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. If Borrowers for any reason fail to pay when due any amount that it is required to pay under **Section 9.04(a)** or **Section 9.04(b)** to Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (based on its Percentage Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Obligations have been Paid in Full at such time, as of immediately prior to such payment in full)) of such unpaid amount; <u>provided</u> that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) or any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of Lenders under this subsection (c) are subject to the provisions of **Section 2.10(d)**.

(d) **Waiver of Consequential Damages, Etc**. To the fullest extent permitted by applicable Laws, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, and in no event shall Administrative Agent be liable to any Loan Party or Lender, 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 Credit Document or any document contemplated hereby, any of the transactions contemplated hereby, any of the Loans or the use of the proceeds thereof. No Indemnitee referred to in **Section 9.04(b)** shall be liable to any Loan Party or Lender or any of their Related Parties 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 Credit Documents or the transactions contemplated hereby or thereby.

(e) **Payments**. All amounts due under this **Section 9.04** shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival**. The agreements in this **Section 9.04** shall survive the resignation of Administrative Agent, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

SECTION 9.05 MARSHALLING; PAYMENTS SET ASIDE.

Neither Administrative Agent nor any other Lending Party shall be under any obligation to marshal any asset in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of any Loan Party is made to Administrative Agent or any other Lending Party, or Administrative Agent or any other Lending Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or any other Lending Party in such Person's discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then: (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred; and (b) each Lending Party severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate. The obligations of each Lending Party under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.06 SUCCESSORS AND ASSIGNS.

(a) **Successors and Assigns Generally**. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lending Party, and no Lender may assign or otherwise transfer any of its rights or obligation hereunder except: (i) to an Eligible Assignee, in accordance with the provisions of subsection (b) of this **Section 9.06**; (ii) by way of participation in accordance with the provisions of subsection (d) of this **Section 9.06**; or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this **Section 9.06**; and any other attempted assignment or transfer by any party hereto shall be null and void. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this **Section 9.06** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and each other Lending Party) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by any Lender**. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts**.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment (if any), the Loans at the time owing to it, no minimum amount need be assigned; or

(B) in any case not described in the immediately preceding subclause (A), the aggregate amount of any Commitment (which, for this purpose, includes the Outstanding Amount of all Loans) or, if the applicable Commitment is not then in effect, the Outstanding Amount of all 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 Administrative Agent) shall not be less than $1,000,000 (or, if less, the remaining portion of Lender's Outstanding Amount in the case of any assignment in respect of the Outstanding Amount of the Loans), unless (I) Administrative Agent consents (which consent shall not be unreasonably withheld or delayed) and (II) so long as an Event of Default has not occurred and is continuing, Lead Borrower consents (which consent shall not be unreasonably withheld or delayed); provided that Lead Borrower shall be deemed to have consented to any such amount unless it shall have objected thereto by written notice to Administrative Agent within five (5) Business Days following the date it receives notice of such amount.

(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.

(iii) **Required Consents**. No consent shall be required for any assignment other than:

(A) any consent required by **Section 9.06(b)(i)(B)**;

(B) the consent of Lead Borrower (which consent shall not be unreasonably withheld, conditioned or delayed); provided that Lead Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to Administrative Agent within five (5) Business Days following the date it received notice of such assignment; provided further that no consent of Lead Borrower shall be required under this **Section 9.06(b)(iii)(B)** if (I) an Event of Default has occurred and is continuing, (II) such assignment is to an Eligible Assignee under clauses (a) through (c) of the definition thereof or (III) such assignment is to [Turmeric] or any Affiliate or Approved Fund or [Turmeric]; and

(C) the consent of Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed) and the Required Lenders, in each case, if such assignment is an assignment of Loans to a Person that is not an Eligible Assignee under clauses (a) through (c) of the definition thereof.

(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided that Administrative Agent (A) may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, and (B) shall waive such processing and recording fee in the case of any assignment by a Lender to another Lender, any Affiliate or any Approved Fund. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Detail Form and all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and all tax forms required by **Section 2.08**.

(v) **No Assignment to any Loan Party or Affiliate**. No such assignment shall be made to any Loan Party or any of its Affiliates or Subsidiaries.

(vi) **No Assignment to Certain Persons**. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this **Section 9.06**, from and after the date recorded in the Register, 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 the assigning 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 Lending Party's rights and obligations under this Agreement, such Lending Party shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 2.07**, **Section 2.08** and **Section 9.04** with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, Borrowers (at its expense) shall execute and deliver Notes to the assignee Lending Party. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this **Section 9.06**.

Notwithstanding anything to the contrary contained in this Agreement or any of the other Credit Documents: (A) no Lender shall be required to comply with this **Section 9.06(b)** in connection with any assignment of all or any portion of its rights and other obligations under or relating to the Loans, this Agreement and the other Credit Documents to any Affiliate of such Lender (other than any Loan Party, any Affiliate thereof or a natural person) or any Approved Fund related to such Lender, and such Lender shall have no obligation to disclose any such assignment to any such Person; provided that such Lender shall continue to be liable as a "***Lender***" under this Agreement and the other Credit Documents until such time, if at all, that such Lender and such other Person have complied with the provisions of this **Section 9.06(b)** in order for such other Person to become a "***Lender***" hereunder; (B) a Lender may pledge, or grant a security interest in, all or any portion of its rights and other obligations under or relating to the Loans, this Agreement and the other Credit Documents to a financial institution or other funding source (other than any Loan Party, any Affiliate thereof or any natural person) or any trustee or agent therefor in support of obligations owing by such Lender to such Person(s); (C) any Lender which is a fund may pledge, or grant a security interest in, all or any portion of its rights and other obligations under or relating to the Loans, this Agreement and the other Credit Documents to its trustee (except if such trustee is any Loan Party, any Affiliate thereof or a natural person) in support of its obligation to its trustee; and (D) no pledge or grant of a security interest pursuant to the immediately preceding clauses (B) or (C) shall release the transferor Lender from any of its obligations hereunder or under any of the other Credit Documents and such Lender such Lender shall continue to be liable as a "***Lender***" under this Agreement and the other Credit Documents until such time, if at all, that such Lender and such other Person have complied with the provisions of this **Section 9.06(b)** in order for such other Person to become a "***Lender***" hereunder.

(c) **Register**. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register shall be conclusive absent manifest error, and Borrowers and Lending Parties 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. The Register shall be available for inspection by

Lead Borrower and each Lender at any reasonable time and from time to time upon reasonable prior written notice. In addition, at any time that a request for a consent for a material or substantive change to the Credit Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from Administrative Agent a copy of the Register.

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, Borrowers or Administrative Agent, sell participations to any Person (other than a natural Person, any Loan Party or any Loan Party'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 Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrowers, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) any such participation shall be of a pro rata portion of all of such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 2.08(d)** with respect to any payments made by such Lender to its Participant(s).

Any document pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Credit Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Credit Documents; provided that such document may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to **Section 9.01** that affects such Participant. Borrowers agrees that each Participant shall be entitled to the benefits of **Section 2.07** and **Section 2.08**, (subject to the requirements and limitations therein) (it being understood that the documentation required under **Section 2.08(f)** shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 9.06(b)**; provided that such Participant shall not be entitled to receive any greater payment under **Section 2.07** or **Section 2.08**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by applicable Laws, each Participant also shall be entitled to the benefits of **Section 9.08** as though it were a Lender; provided that such Participant agrees to be subject to **Section 2.09** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Credit Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form for the purposes of the Code and under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Section 1.163-5(b) 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **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 (including under its Note, if any) to secure obligations of such Lender owing to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **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 9.07 TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY.

Administrative Agent and each other Lending Party each agrees to treat the Information in a confidential manner and to not disclose the Information to Persons not party to this Agreement (or Affiliates thereof), except that Information may be disclosed (including by means of the Electronic Platform): (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, representatives and funding and financing sources (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and agree to keep such Information confidential on the same terms as provided herein); (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 by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this **Section 9.07** to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement; (g) with the consent of Lead Borrower; or (h) to the extent such Information: (i) becomes publicly available other than as a result of a breach of this **Section 9.07**; or (ii) becomes available to Administrative Agent, any Lending Party or any of their respective Affiliates on a non-confidential basis from a source other any Loan Party and not in contravention of this **Section 9.07**. For purposes of this **Section 9.07**, "***Information***" means all non-public information (including financial information) received from any Loan Party relating to such Loan Party or its business, other than any such information that is available to Administrative Agent or any other Lending Party on a non-confidential basis, and not in contravention of this **Section 9.07**, prior to disclosure by such Loan Party. Any Person required to maintain the confidentiality of Information as provided in this **Section 9.07**: (A) 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; and (B) shall not disclose any financial information concerning any Loan Party or its business (including any information based on any such financial information) or use any such financial information for commercial purposes without the prior written consent of the applicable Loan Party. Notwithstanding the foregoing, each Loan Party authorizes each Lending Party to make appropriate announcements of the financial arrangements entered into among the Loan Parties, Administrative Agent, and Lenders, including announcements which are commonly known as "tombstones," in such publications and to such selected parties as each Lending Party may in its sole and absolute discretion deem appropriate.

SECTION 9.08 RIGHT OF SETOFF.

If an Event of Default shall have occurred and be continuing, each of Lending Parties and their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Laws, 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 (in whatever currency) at any time owing by such Lending Party to or for the credit or the account of any Borrower or any other Loan Party against any and all of the Obligations to such Lending Party or such Affiliate, irrespective of whether or not such Lending Party shall have made any demand under this Agreement or any other Credit Document and although such obligations of Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lending Party different from the branch or office holding such deposit or obligated on such obligations. The rights of each Lending Party and its Affiliates under this **Section 9.08** are in addition to other rights and remedies (including other rights of setoff) that such Lending Party or its Affiliates may have. Each Lending Party agrees to notify Lead Borrower and Administrative 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. NOTWITHSTANDING THE FOREGOING, NO LENDING PARTY SHALL EXERCISE, OR ATTEMPT TO EXERCISE, ANY RIGHT OF SET OFF, BANKER'S LIEN, OR THE LIKE, AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF BORROWERS OR ANY OTHER LOAN PARTY HELD OR MAINTAINED BY SUCH LENDING PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF ADMINISTRATIVE AGENT.

SECTION 9.09 COUNTERPARTS; INTEGRATION; EFFECTIVENESS.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous documents, agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 3.01**, this Agreement shall become effective when it shall have been executed and delivered by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile. portable document format or by electronic signature shall be effective as delivery of a manually executed counterpart of this Agreement. Electronic signatures shall be of the same legal effect, validity or enforceability as a manually executed signature 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 9.10 SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All representations and warranties made hereunder and in any other Credit Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Term Loans, and shall continue in full force and effect as long as any Loans or any other Obligations (other than Unasserted Obligations) have not been Paid in Full.

SECTION 9.11 SEVERABILITY.

If any provision of this Agreement or the other Credit Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Credit Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.12 USA PATRIOT ACT NOTICE.

Each Lending Party that is subject to the Patriot Act and Administrative Agent (for itself and not on behalf of any Lending Party) hereby notify Borrowers and each other Loan Party that, pursuant to the requirements of the Patriot Act, they are each required to obtain, verify and record, and Borrowers and each other Loan Party agrees to provide to the requesting Lending Party or Administrative Agent promptly upon request, information that identifies each Borrower and each other Loan Party, which information includes the name and address of each Borrower and each other Loan Party and other information that will allow such Lending Party or Administrative Agent, as applicable, to identify each Borrower and each other Loan Party in accordance with the Patriot Act.

SECTION 9.13 GOVERNING LAW; JURISDICTION; ETC.

(A) **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW 5-1401 AND 5-1402) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

(B) **SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT TO WHICH EACH IS A PARTY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH BANKRUPTCY COURT, STATE COURTS OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, IN SUCH FEDERAL COURTS. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT OR ANY OTHER LENDING PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST ANY LOAN PARTY OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.**

(C) **WAIVER OF VENUE. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION 9.13. EACH OF THE PARTIES HERETO HEREBY**

IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(D) **SERVICE OF PROCESS. EACH OF THE PARTIES HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAWS.**

SECTION 9.14 WAIVER OF RIGHT TO JURY TRIAL.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

SECTION 9.15 TERMINATION.

This Agreement will terminate (other than indemnification provisions and other provisions that by their terms survive termination of this Agreement) upon the payment in full of all Obligations of Borrowers (other than Unasserted Obligations). Upon any such termination, Administrative Agent will, at Borrowers' expense, return to the applicable Loan Party any Collateral in the possession or control of Administrative Agent or any Lender and execute and deliver to the Loan Parties such documents as any Loan Party shall reasonably request to evidence such termination.

SECTION 9.16 ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS.

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "***QFC Credit Support***" and each such QFC a "***Supported QFC***"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "***U.S. Special Resolution Regimes***") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a "***Covered Party***") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or an Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the

Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States.

SECTION 9.17 ERRONEOUS PAYMENTS.

(a) Each Lender and any other party hereto hereby severally agrees that if (i) Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender (or a Lender which is an Affiliate of such Lender) or any other Person that has received funds from Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender (each such recipient, a "***Payment Recipient***") that Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under clause (b) below) that any funds received by such Payment Recipient were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this **Section 9.17(a)**, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "***Erroneous Payment***"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Administrative Agent, and upon demand from Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one (1) Business Day thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect (such amount, the "***Erroneous Payment Return***").

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor by Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "***Erroneous Payment Return Deficiency***"), then at the sole discretion of Administrative Agent and upon Administrative Agent's written notice to such

Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "***Erroneous Payment Impacted Loans***") to Administrative Agent or, at the option of Administrative Agent, Administrative Agent's applicable lending affiliate (such assignee, the "***Agent Assignee***") in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the "***Erroneous Payment Deficiency Assignment***") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, Administrative Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of **Section 9.06** and (3) Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or Secured Party, to the rights and interests of such Lender, Issuing Bank or Secured Party, as the case may be) under the Credit Documents with respect to such amount (the "***Erroneous Payment Subrogation Rights***") (provided that the Loan Parties' Obligations under the Credit Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Loan Party; provided that this **Section 9.17** shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrowers for the purpose of making such Erroneous Payment.

(f) Each party's obligations under this **Section 9.17** shall survive the resignation or replacement of Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Credit Document.

(g) The provisions of this **Section 9.17** to the contrary notwithstanding, (i) nothing in this **Section 9.17** will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that Administrative Agent has received payment from the Payment Recipient in immediately available funds the Erroneous Payment Return, whether directly from the Payment Recipient, as a result of the exercise by Administrative Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of the Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

SECTION 9.18 ORDERS CONTROL.

To the extent that any specific provision hereof or in any other Credit Document is inconsistent with any of the Orders, the Interim Order or Final Order (as applicable) shall control.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

LEAD BORROWER:

PLENTY UNLIMITED INC.,
a Delaware corporation

By: ___________________________________
Name:_________________________________
Title: __________________________________

BORROWER:

PLENTY UNLIMITED TEXAS LLC,
a Texas limited liability company

By: ___________________________________
Name:_________________________________
Title: __________________________________

ADMINISTRATIVE AGENT:

GLAS USA LLC

By: ______________________________
Name:
Title:

COLLATERAL AGENT:

GLAS USA LLC

By: ______________________________
Name:
Title:

LENDERS:

ONE MADISON GROUP – PLENTY, LLC,

By: ______________________________
Name:
Title:

SVF II PACIFIC (DE) LLC,

By: ______________________________
Name:
Title:

<u>Exhibit 2</u>

Initial DIP Budget

	Post-Petition								
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Plenty DIP Budget Cash Flow (03.23.25 v1.0)	**WE 03/28**	**WE 04/04**	**WE 04/11**	**WE 04/18**	**WE 04/25**	**WE 05/02**	**WE 05/09**	**WE 05/16**	**Total Post-Petition**
Revenue / AR Cash Collections	-	-	-	-	-	-	-	-	-
Operating Expenses									
Payroll & Benefits	(476,865)	(258,561)	(410,865)	(58,139)	(438,865)	(258,561)	(410,865)	(58,139)	(2,370,859)
Insurance	(30,234)	-	(5,000)	-	-	-	(5,000)	-	(40,234)
Rent & CAM	(160,000)	(351,862)	-	(4,000)	(2,500)	(351,862)	-	(4,000)	(874,224)
Software	(196,935)	(120,400)	(30,010)	(20,925)	-	(34,880)	(61,100)	(80,625)	(544,875)
Other Operating Expenses	(802,756)	(522,833)	(602,664)	(393,684)	(247,789)	(49,378)	(205,676)	(130,304)	(2,955,083)
Total Operating Expenses	**(1,666,789)**	**(1,253,656)**	**(1,048,539)**	**(476,748)**	**(689,154)**	**(694,681)**	**(682,640)**	**(273,069)**	**(6,785,275)**
Net Operating Cash Flow	**(1,666,789)**	**(1,253,656)**	**(1,048,539)**	**(476,748)**	**(689,154)**	**(694,681)**	**(682,640)**	**(273,069)**	**(6,785,275)**
Chapter 11 Adminstration Costs									
Chapter 11 Professional Fees	(2,849,400)	(1,237,222)	(1,311,667)	(1,124,167)	(924,167)	(2,142,222)	(1,099,167)	(1,861,167)	(12,549,178)
UST Fees / Other Admin Costs	(200,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	-	(450,000)	(700,000)
Total Chapter 11 Adminstration Costs	**(3,049,400)**	**(1,247,222)**	**(1,321,667)**	**(1,134,167)**	**(934,167)**	**(2,152,222)**	**(1,099,167)**	**(2,311,167)**	**(13,249,178)**
Debt/Financing Activities									
DIP Loan - Draw/(Paydown)	12,000,000	-	-	-	8,700,000	-	-	-	20,700,000
Total Debt/Financing Activities	**12,000,000**	**-**	**-**	**-**	**8,700,000**	**-**	**-**	**-**	**20,700,000**
LOC Restricted Cash[1]	(4,255,415)	-	-	-	-	-	-	-	(4,255,415)
Net Cash Flow	**3,028,396**	**(2,500,878)**	**(2,370,205)**	**(1,610,915)**	**7,076,680**	**(2,846,903)**	**(1,781,807)**	**(2,584,235)**	**(3,589,867)**
Projected Opening Cash Balance	**4,389,867**	**7,418,263**	**4,917,385**	**2,547,180**	**936,265**	**8,012,945**	**5,166,042**	**3,384,235**	**4,389,867**
Net Change in Cash	3,028,396	(2,500,878)	(2,370,205)	(1,610,915)	7,076,680	(2,846,903)	(1,781,807)	(2,584,235)	(3,589,867)
Ending Total Cash Balance	**7,418,263**	**4,917,385**	**2,547,180**	**936,265**	**8,012,945**	**5,166,042**	**3,384,235**	**800,000**	**800,000**
Surety Bond[2]		(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)
Ending Accessible Cash	**7,418,263**	**4,617,385**	**2,247,180**	**636,265**	**7,712,945**	**4,866,042**	**3,084,235**	**500,000**	**500,000**

Notes:

(1): Consists of restricted cash in support of letters of credit

(2): $300K consists of surety performance bond.