

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BOOMERANG TUBE, LLC, a Delaware limited liability
company, *et al.*,¹

Debtors.

Chapter 11

Case No. 15-11247 (___)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING POSTPETITION FINANCING UNDER TWO CREDIT
FACILITIES, (B) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (C) AUTHORIZING THE USE OF CASH
COLLATERAL, (D) GRANTING ADEQUATE PROTECTION, (E) MODIFYING
THE AUTOMATIC STAY, (F) SCHEDULING A FINAL HEARING, AND (G)
GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) file this motion (this “**Motion**”)² for entry of interim orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim DIP Orders**”) and final orders (the “**Final DIP Orders**” and, together with the Interim DIP Orders, the “**DIP Orders**”), (a) authorizing the Debtors to obtain postpetition secured financing in the form of (i) the Term DIP Facility set forth in the Term DIP Loan Agreement, attached hereto as **Exhibit 1** to **Exhibit A** and (ii) the ABL DIP Facility set forth in the ABL DIP Credit Agreement, attached hereto as **Exhibit 1** to **Exhibit B**; (b) granting liens and providing superpriority claims with respect to such postpetition financing; (c) authorizing the Debtors to use Cash Collateral; (d) approving the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors’ corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

² Unless otherwise noted herein, all capitalized terms used in this Motion shall have the meanings ascribed to such terms herein, regardless of whether such terms are defined differently elsewhere in this Motion. Capitalized terms used in this Motion but not otherwise defined herein shall have the meanings ascribed to them in the Interim DIP Orders, the Term DIP Loan Agreement, and the ABL DIP Credit Agreement, as applicable.

form of adequate protection to be provided by the Debtors to the Term Lenders, Term Agent, ABL Lenders and ABL Agent, as applicable; (e) modifying the automatic stay to the extent necessary to effectuate the terms and conditions of the Interim DIP Orders; (f) scheduling a final hearing (the “**Final Hearing**”) to consider entry of the Final DIP Orders; and (g) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Kevin Nystrom, Chief Restructuring Officer, Interim Chief Executive Officer, and President of Boomerang Tube, LLC, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”). In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

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

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2002-1(b), 4001-2 and 9013-1(m).

Preliminary Statement

4. The Debtors require immediate access to liquidity to ensure that they are able to continue operating their business during these chapter 11 cases and thereby preserve the value of their estates for the benefit of all parties in interest. To that end, prior to filing these chapter 11 cases, the Debtors secured commitments for \$145 million in postpetition debtor-in-possession financing (the “**DIP Financing**”) to ensure that ongoing business operations—and overall enterprise value—can be preserved and continue without disruption. The DIP Financing proposed herein consists of (i) a \$60 million new money term loan (the “**Term DIP Facility**”), provided by certain lenders (the “**Term DIP Lenders**”) party to the Term Loan Agreement (collectively with the DIP Loan Documents as defined therein, the “**Term Loan DIP Documents**”) and (ii) access to additional funds in an amount up to \$85 million of revolving loans and letters of credit (the “**ABL DIP Facility**,” and together with the Term DIP Facility, the “**DIP Facilities**”), provided by lenders (the “**ABL DIP Lenders**” and collectively with the Term DIP Lenders, the “**DIP Lenders**”) party to the ABL Loan Agreement (collectively with the Loan Documents as defined therein, the “**ABL DIP Documents**” and, collectively with the Term Loan DIP Documents, the “**DIP Loan Documents**”). Among other things, the proceeds from the DIP Facilities, together with anticipated cash flow from operations, will be used to honor employee wages and benefits, procure goods and services integral to the Debtors’ ongoing business operations, fund certain operational expenses, and allow the Debtors to maintain favorable relationships with their vendors, suppliers, employees, and customers, and satisfy working capital needs in the ordinary course.

5. The Debtors believe that the DIP Facilities represent the best source of appropriately-sized financing available to the Debtors under the circumstances. The DIP Facilities are an essential component of the broader restructuring transactions contemplated by

the Debtors and their largest stakeholders. In conjunction with therewith, the Debtors have successfully negotiated the DIP Facilities, which generally provide:

- the \$60 million Term DIP Facility secured by (i) consensual, first priority priming liens on the Term Collateral (subject only to certain permitted liens) and (ii) junior priority liens on the ABL Collateral, junior only to the existing liens securing the ABL DIP Facility and ABL Facility, as well as additional liens described herein;
- the up to \$85 million ABL DIP Facility secured by (i) junior priority liens on the ABL Collateral, junior only to the existing liens securing the ABL Facility, and (ii) junior priority liens on the Term Collateral, junior only to the liens securing the Term DIP Facility, Bridge Loan Facility and Term Loan Facility, as well as additional liens described herein;
- borrowings and disbursements to be made pursuant to the terms of an agreed budget, a copy of which is attached to the Interim DIP Orders (as the same may be modified in accordance with the DIP Credit Agreements, the “**Budget**”); and
- a scheduled maturity date of the Term DIP Facility of the earlier of 120 days after the Petition Date, consummation of any sale of all or substantially all of the Debtors’ assets or consummation of the Plan, and a scheduled maturity date of the ABL DIP Facility of the earlier of 150 days after the Petition Date, consummation of any sale of all or substantially all of the Debtors’ assets subject to the ABL DIP Liens or consummation of the Plan, each with additional, customary termination events.

6. Absent interim approval of the DIP Facilities, there is a significant risk that the Debtors would be forced to cease operations or otherwise stop paying their obligations as they become due, thereby threatening the Debtors’ value as a going concern to the detriment of the Debtors’ estates and their creditors. In addition, substantially all the Debtors’ assets are encumbered by liens arising under their prepetition credit facilities, and the Debtors believe that the Term Lenders are materially undersecured. As a result, the Debtors do not believe third-party debtor-in-possession financing would be reasonably available and have determined that their proposed DIP Facilities, as part of the broader restructuring transactions described in the

First Day Declaration, provide the best path forward under the circumstances to address their immediate liquidity needs and fund administration of these chapter 11 cases.

Terms and Conditions of the Term DIP Facility and ABL DIP Facility

I. Highlighted Provisions under Bankruptcy Rule 4001 and Local Rule 4001-2.

7. The following chart contains a summary of the essential terms of the proposed DIP Facilities, together with references to the applicable sections of the relevant source documents, in accordance with Bankruptcy Rule 4001(b)(1)(B) and (c)(1)(B) and Local Rule 4001-2.³

Description	Credit Facility	Summary of Material Terms
Borrower	DIP Term Facility	Boomerang Tube, LLC (" Borrower ") <i>See</i> DIP Term Agt., pml.; Interim DIP Term Ord., pml.
	ABL DIP Facility	Borrower <i>See</i> ABL DIP Agt. pml.
Guarantors	DIP Term Facility	BTCSP, LLC and BT Financing, Inc. (" Guarantors ") <i>See</i> Interim DIP Term Ord., pml.
	ABL DIP Facility	Guarantors. <i>See</i> Interim ABL DIP Ord., Ex. A, ¶ 21.
DIP Lenders	DIP Term Facility	Lenders party to the Term DIP Loan Agreement from time to time. <i>See</i> DIP Term Agt. pml.; Interim DIP Term Ord., pml.
	ABL DIP Facility	Wells Fargo Capital Finance, LLC (" WFCF ") and Bank of America, N.A. (" BANA "), and any other person made party as a lender to the ABL DIP Credit Agreement. <i>See</i> ABL DIP Agt. pml., Sched. 1.1; Interim ABL DIP Ord., Ex. A, ¶ 43.
Administrative Agent	Term DIP Facility	Cortland Capital Market Services LLC (in such capacity, the " Term DIP Agent ") <i>See</i> DIP Term Agt., pml.; Interim DIP Term Ord., pml.
	ABL DIP Facility	WFCF (in such capacity, the " ABL DIP Agent ") <i>See</i> ABL DIP Agt., pml.; Interim ABL DIP Ord., Ex. A, ¶ 51.
Commitment	Term DIP Facility	Loans to be advanced in an aggregate principal amount not to exceed \$60 million, \$35 million of which shall be available on an interim

³ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent that anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined shall have the meanings ascribed to them in the DIP Loan Documents or the Interim DIP Orders, as applicable.

Description	Credit Facility	Summary of Material Terms
		<p>basis (subject to the terms of the Term DIP Loan Agreement).</p> <p><i>See</i> DIP Term Agt., §§ 1.1, 2.1; Interim DIP Term Ord., pmb1; <i>Id.</i> at ¶ 4.</p>
	ABL DIP Facility	<p>Revolving loans and letter of credit obligations in an aggregate principal amount not to exceed \$85 million, all of which shall be available on an interim basis (subject to the terms of the ABL DIP Credit Agreement).</p> <p><i>See</i> ABL DIP Agt., Sched. 1.1, C-1; Interim ABL DIP Ord., Ex. A, ¶ 34.</p>
Interest Rates	Term DIP Facility	<p>Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted LIBOR Rate determined for such Interest Period plus 11.0% per annum. Each ABR Loan shall bear interest for each day that it is outstanding at a rate per annum equal to the Alternate Base Rate in effect for such day plus 10.0% per annum.</p> <p><u>Default Interest Rate:</u> Applicable rate plus 3.0%.</p> <p><i>See</i> DIP Term Agt., § 4.1.</p>
	ABL DIP Facility	<p>LIBOR Rate Loans shall bear interest at a rate per annum equal to the LIBOR Rate plus 4.5%. Base Rate Loans shall bear interest at a fluctuating rate per annum equal to the Base Rate plus 2.5%.</p> <p><u>Default Interest Rate:</u> Applicable rate plus 2.0% per annum.</p> <p><i>See</i> ABL DIP Agt., § 2.6; Interim ABL DIP Ord., ¶ 3(c)(iii).</p>
Term	Term DIP Facility	<p>The earliest to occur of (a) the date that is one hundred twenty (120) calendar days after the Petition Date, (b) the date that any sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code is consummated, (c) if the Final Order has not been entered, the date that is forty-five (45) calendar days after the Petition Date, (d) the effective date of the Plan and (e) the date of any acceleration of the DIP Loans hereunder or the termination of the DIP Loan Commitments under the Term DIP Loan Agreement.</p> <p><i>See</i> DIP Term Agt., § 1.1; Interim DIP Term Ord., ¶ 29.</p>
	ABL DIP Facility	<p>The earliest to occur of (a) the date that is one hundred and fifty (150) days after the Petition Date, (b) the consummation of any sale of all or substantially all of the Postpetition Revolving Loan Collateral of the Debtors pursuant to Code Section 363, (c) if the Final Order has not been entered, the date that is forty-five (45) calendar days after the Petition Date, (d) the occurrence of an Event of Default and (e) the Effective Date.</p> <p><i>See</i> ABL DIP Agt., § 3.3, Sch. 1.1; Interim ABL DIP Ord., ¶ 3(c)(vi); <i>Id.</i> Ex. A, ¶ 72.</p>
Use of DIP Facility and Cash Collateral	Term DIP Facility	<p>Proceeds of the Term DIP Facility shall be used solely for (a) working capital and other general corporate purposes of the Debtors, (b) costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred (i) in connection with the Term DIP Facility, and (ii) by the Term Agent or Bridge Agent in connection with the Cases, in each case, to the extent such costs, fees and</p>

Description	Credit Facility	Summary of Material Terms
		<p>expenses are reimbursable under the relevant loan documents, (c) repayment in full in cash of all obligations under the Bridge Loan Facility, and (d) any Overadvance Payments related to the ABL Facility.</p> <p><i>See</i> DIP Term Agt., § 5.16; Interim DIP Term Ord., ¶¶ F(v), 11.</p>
	<p>ABL DIP Facility</p>	<p><u>Application of Cash Collateral.</u> The Postpetition Revolving Loan Agent is authorized to apply all Cash Collateral now or hereafter in the Postpetition Revolving Loan Agent's possession or control as follows: (1) first, to payment of Prepetition Revolving Loan Debt (other than the Sponsor Guaranteed Amount and the Prepetition Priority ABL Debt), including, accrued and accruing Allowable 506(b) Amounts when due in accordance with the terms of the Prepetition Revolving Loan Documents; (2) second, to payment of Postpetition Revolving Loan Debt consisting of Postpetition Revolving Loan Charges; (3) third, to payment of other Postpetition Revolving Loan Debt in accordance with the Postpetition Revolving Loan Documents; (4) fourth, to payment of Prepetition Priority ABL Debt; (5) fifth, to payment of the Sponsor Guaranteed Amount; and (6) sixth, after Payment in Full of all Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt on a final and indefeasible basis, to the Postpetition Term Loan Agent for application to the Postpetition Term Loan Debt; or in such other order as Postpetition Revolving Loan Agent may agree with the Debtors from time to time; provided, however, (i) any Cash Collateral collected or otherwise converted from property of the Debtors in the categories described in the definition of "Term Loan Collateral" under the Prepetition Intercreditor Agreement and securing the Prepetition Priority ABL Debt may only be applied to the payment of the amounts set forth in subclause (4), and the amounts set forth in subclause (4) must be satisfied, first, from Cash Collateral securing the Prepetition Priority ABL Collateral and, second, from all other Cash Collateral. All such applications of Cash Collateral to pay such Prepetition Revolving Loan Debt shall be subject only to the right of parties in interest under Paragraph 7 of the Interim Order. Any amounts disgorged in connection with any determination under Paragraph 7 of the Interim Order shall be first applied to reduce the Postpetition Revolving Loan Debt dollar-for-dollar.</p> <p><u>Permitted Uses of Postpetition Revolving Loan Debt.</u> The Debtors are authorized and have agreed to incur Postpetition Revolving Loan Debt solely: (1) in accordance with the terms and provisions of the Interim Order and the Postpetition Revolving Loan Documents, (2) to the extent required to pay those expenses enumerated in the Budget as and when such expenses become due and payable, subject to the Permitted Variance, (3) to pay the Postpetition Revolving Loan Charges, (4) to provide for adequate protection in favor of the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders, (5) subject to the rights of parties in interest set forth in Paragraph 7 of the Interim Order, to pay any Allowable 506(b) Amounts when due in accordance with the terms of the Prepetition Revolving Loan Documents, and (6) upon entry of the Final Order, to repay all amounts of Prepetition Revolving Loan Debt other than the Sponsor Guaranteed Amount, subject to the rights of parties in interest set forth in Paragraph 7 of the Interim Order. If the Postpetition Revolving Loan Agent advances monies to the Debtors and the</p>

Description	Credit Facility	Summary of Material Terms
		<p>Debtors use such monies other than in accordance with the terms or provisions of the Interim Order, such advances shall be considered Postpetition Revolving Loan Debt for purposes of the Interim Order. Notwithstanding anything to the contrary contained herein, no proceeds of Postpetition Revolving Loan Debt or Postpetition Revolving Loan Collateral (other than the Prepetition Term Loan Collateral, after the payment of the Prepetition Priority ABL Debt) may be used to provide any payments in favor of the Prepetition Term Loan Agent, the Prepetition Term Loan Lenders, the Postpetition Term Loan Agent or the Postpetition Term Loan Lenders, or for application to the Prepetition Term Loan Debt or Postpetition Term Loan Debt, in each case, including any interest, fees, charges or expenses arising on account thereof, so long as the Postpetition Revolving Loan Debt and the Prepetition Revolving Loan Debt remain outstanding; provided, however, that the proceeds of Postpetition Revolving Loan Collateral described in paragraph 4(d)(ii)(B) may be applied to the Postpetition Term Loan Debt on a pari passu basis with the Incremental DIP Amount, and after the payment in full of the Incremental DIP Amount, such proceeds shall be applied to the Postpetition Term Loan Debt until such obligations are paid in full.</p> <p><i>See</i> ABL DIP Agt., pmb1, § 6.13; Interim ABL DIP Ord., ¶¶ 2(b), 3(b).</p>
Entities with Interests in Cash Collateral	Term DIP Facility	Bridge Lenders, Bridge Agent, Term Lenders, and Term Agent (with respect to the TL Deposit Account).
	ABL DIP Facility	ABL Lenders and ABL Agent. <i>See</i> Interim ABL DIP Ord., Ex. A, ¶ 11.
Fees	Term DIP Facility	<p>The Borrower agrees to pay (i) a commitment fee of 2% of the principal amount of the Term DIP Facility payable in cash on the Closing Date; (ii) an administrative agency fee of \$35,000 payable in cash to the Term DIP Agent on the Closing Date; (iii) a “Backstop Exit Fee” for those Term DIP Lenders who commit to provide funding (the “Backstop Exit Lenders”) to backstop the Exit Term Facility (defined in the Plan Support Agreement), to be shared by the Backstop Exit Lenders pro rata in accordance with their respective backstop commitments, as follows: upon the closing of the Exit Term Facility, 10% of the equity in the reorganized Borrower; provided, however, that in the event that (x) 100% of the Term Lenders are Consenting Term Lenders, and (y) 100% of the Term Lenders (or the investment advisors, managers, affiliates, related funds or managed accounts of such Term Lenders) are Backstop Exit Lenders and each Term Lender (or its designated investment advisor, manager, affiliate, related fund or managed account) has committed to its full pro rata share of the Exit Term Facility (the occurrence of both (x) and (y) being referred to herein as “100% Term Lender Consent”), then the Backstop Fee shall be 10% of the equity of Holdings (instead of 10% of the equity of the reorganized Borrower (for the avoidance of doubt, no Backstop Exit Fee shall be payable unless the closing of the Exit Term Facility occurs); and (iv) in the event that the DIP Loans are repaid from the proceeds of any source other than the Exit Term Facility (or the obligations under the Term DIP Facility have been accelerated or otherwise become due and payable for any reason other</p>

Description	Credit Facility	Summary of Material Terms
		<p>than the occurrence of the Effective Date), to the Term DIP Lenders a prepayment premium equal to \$2,500,000, which shall be shared in accordance with their respective pro rata shares of the DIP Loan Commitment.</p> <p><i>See</i> DIP Term Agt., § 4.5, 6.1(r).</p>
	ABL DIP Facility	<p>Borrower shall pay (i) a fee in an amount equal to \$300,000, payable ratably for the benefit of the DIP Revolving Lenders, with \$150,000 earned and payable upon entry of the Interim Order and \$150,000 earned and payable upon first election by the Borrower to incur an Incremental DIP Advance with the prior written consent of the DIP Term Agent; (ii) an Applicable Unused Revolver Fee of 0.50% per annum; provided that, if as of any date of determination, the average Daily Balance of the Revolver Usage during the immediately preceding month is more than 50% of the Maximum Revolver Amount, the Applicable Unused Revolver Fee means 0.375% per annum and (iii) letter of credit, appraisal and examination fees.</p> <p><i>See</i> ABL DIP Agt., § 2.10; Interim ABL DIP Ord., ¶ 3(c)(iv)</p>
Conditions of Borrowing	Term DIP Facility	<p>Certain customary conditions precedent to extensions of credit, including, among other things, (a) execution of loan documents, (b) entry of the Interim DIP Orders and other first day orders, (c) payment of certain fees required by the Term DIP Loan Agreement, (d) receipt of Borrowing Notice, (e) compliance with Budget, and (f) no Default or Event of Default shall have occurred or be existing.</p> <p><i>See</i> DIP Term Agt., §§ 6.1, 6.2.</p>
	ABL DIP Facility	<p>Certain customary conditions precedent to extensions of credit, including, among other things, (a) execution of loan documents, (b) entry of the Interim DIP Orders and other first day orders, (c) receipt of Budget and (d) no Default or Event of Default shall have occurred or be existing.</p> <p><i>See</i> ABL DIP Agt., § 3.1-3.2, Schedule 3.1</p>
Budget	Term DIP Facility	<p>Proceeds of the Term DIP Facility are subject to a customary budget, attached to the Interim DIP Orders.</p> <p><i>See</i> DIP Term Agt., § 5.16; Interim DIP Term Ord., ¶ 11.</p>
	ABL DIP Facility	<p>Use of Cash Collateral and proceeds from the DIP Facilities are subject to a customary budget, attached to the Interim DIP Orders.</p> <p><i>See</i> ABL DIP Agt., pmb1, § 6.13; Interim ABL DIP Ord., ¶ 3(b)</p>
Reporting Information	Term DIP Facility	<p>Standard reporting requirements, including, (i) monthly consolidated financial statements; (ii) quarterly consolidated financial statements; (iii) annual audited consolidated financial statements; (iv) updated cash flow budgets; (v) a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements of the Debtors for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the Initial Approved Budget or the most recently Approved Budget delivered prior to such Variance Report (as applicable) on a weekly and cumulative basis; and (vi) annual business and financial plans within at least thirty (30) days prior to the fiscal year-end.</p> <p><i>See</i> DIP Term Agt., §§ 7.1, 7.2; Interim DIP Term Ord., ¶¶ 16, 17.</p>

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	ABL DIP Facility	Standard reporting requirements that largely conform to the Debtors' prepetition reporting obligations and the reporting requirements under the Term DIP Facility. <i>See ABL DIP Agt., § 5.2.</i>
Variance Covenant	Term DIP Facility	Permitted Variance includes (i) any favorable variance, (ii) an unfavorable variance of no more than 10%. <i>See DIP Term Agt., §§ 1.1, 8.13; Interim DIP Term Ord., ¶ 20.</i>
	ABL DIP Facility	Permitted Variance includes, with respect to the Borrower's cash receipts and disbursements, (i) all favorable variances, (ii) an unfavorable variance of no more than 15.0%. <i>See ABL DIP Agt., Sched. 1.1; Interim ABL DIP Ord., ¶ 3(b).</i>
Chapter 11 Milestones	Term DIP Facility	Obtain court approval of (x) the Interim Order within three (3) business days of the Petition Date, and (y) the Final Order within forty-five (45) days after the Petition Date; Obtain confirmation of the Plan by no later than September 22, 2015; and Consummate the Plan by no later than October 6, 2015. <i>See DIP Term Agt. § 9.1(l)(xiv).</i>
	ABL DIP Facility	Adhere to the milestones in the Plan Support Agreement Obtain court approval of (x) the Interim Order within three (3) business days of the Filing Date, and (y) the Final Order within forty-five (45) days after the Filing Date; On or before October 6, 2015, (or such later date as WFCF shall agree), such confirmed plan of reorganization shall be consummated and all obligations under the Existing Loan Agreement and this Agreement shall have been paid in full, in cash, on a final and indefeasible basis, or refinanced under an exit loan facility provided by WFCF and the Existing Lenders. <i>See ABL DIP Agt., § 5.16, Sched. 5.16.</i>
Liens and Priorities	Term DIP Facility	The Term DIP Agent, for the benefit of itself and the Term DIP Lenders, and for the purpose of securing the Term DIP Obligations, shall have the following DIP Liens: (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected first priority liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is not otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date to secure any and all obligations owing under an with respect to the Term DIP Facility and the Term DIP Loan Documents (collectively, and including, without limitation, all " Obligations " as defined in the Term DIP Loan Agreement, the " Term DIP Obligations "), subject only to the Carve-Out and subject only to (x) the Carve-Out, (y) with respect to such assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) in the Interim Order, the ABL Pre-Petition Liens, ABL Permitted Prior Liens, the ABL Senior DIP Liens and the Senior ABL Adequate Protection Liens, and (z) with respect to all such other assets and properties of the Debtors, such liens of the

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		<p>Term DIP Agent ranking <i>pari passu</i> with the liens granted to secure the Incremental ABL DIP Amount; (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (other than the ABL Collateral, other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) in the Interim Order and Term Collateral, in each case as to which the liens and security interests in favor of the Term DIP Agent for the purpose of securing the Term DIP Obligations are described in clause (v) or (vi) below, as applicable), subject only to any such valid, perfected and unavoidable security interest or lien and the Carve-Out, and with such liens of the Term DIP Agent ranking <i>pari passu</i> with the liens granted to secure the Incremental ABL DIP Amount; (iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all present and after-acquired ABL Collateral and other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) in the Interim Order that are subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, wherever located, subject only to the Carve-Out, the ABL Pre-Petition Liens, ABL Permitted Prior Liens, the ABL Senior DIP Liens and the Senior ABL Adequate Protection Liens; and (iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected first priority senior priming liens on and security interests in all present and after-acquired DIP Collateral securing the Pre-Petition Obligations (other than ABL Collateral and such other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) of the Interim Order), wherever located, subject only to Term Permitted Prior Liens and the Carve-Out.</p> <p><i>See</i> DIP Term Agt., § 3.1; Interim DIP Term Ord., ¶ 7.</p>
	ABL DIP Facility	<p>Subject to the Carve-Out, (i) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by a second priority lien on, and security interest in, all present and after-acquired property that consists of the ABL Collateral, which lien shall be junior only to the liens securing the ABL Facility, including related replacement liens; (ii) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by a junior lien on, and security interest in, all present and after-acquired property that consists of the Term Collateral, junior only to the liens securing the Term DIP Facility, Bridge Loan Facility, and Term Loan Facility, replacement liens granted to secure the Bridge Loan Facility or the Term Loan Facility, and to certain valid and unenforceable permitted liens senior to the liens of the Bridge Lenders or the Term Lenders; and (iii) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by a second priority lien on and security interest in, all unencumbered assets of the Debtors (including, without limitation, upon entry of a Final Order, avoidance actions and proceeds of avoidance actions under chapter 5 of the Bankruptcy Code); provided that such liens shall be <i>pari passu</i> with the with the liens of the Term DIP Agent on such other assets to the extent such lien of the ABL DIP Agent secures the Incremental DIP Amount, and shall be otherwise junior only to any such lien of the Term DIP Agent.</p>

Description	Credit Facility	Summary of Material Terms
Events of Default	Term DIP Facility	<p><i>See</i> Interim ABL DIP Ord., ¶ 3(d), 4(d)(ii).</p> <p>Except as otherwise provided in the Interim DIP Orders or to the extent that the Term DIP Lenders may otherwise agree in writing, any violation of any of the terms of the Interim DIP Orders or any occurrence of an “Event of Default” under the Term DIP Loan Agreement shall constitute an event of default.</p> <p><i>See</i> DIP Term Agt., § 9.1; Interim DIP Term Ord., ¶ 12.</p>
	ABL DIP Facility	<p>Except as otherwise provided in the Interim DIP Orders or to the extent that the ABL DIP Lenders may otherwise agree in writing, any violation of any of the terms of the Interim DIP Orders or any occurrence of an “Event of Default” under the ABL DIP Credit Agreement shall constitute an event of default.</p> <p><i>See</i> ABL DIP Agt., §§ 8.1-8.30.</p>
Carve-Out	Term DIP Facility	<p>“Carve-Out” shall mean an amount equal to the sum of the following (A) one-half (1/2) of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (iii) to the extent allowed by this Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors (other than the Investment Banker) and any official committee of creditors at any time before or on the date and time of the delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of a Carve Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice; plus, (B) to the extent allowed by this Court at any time, all accrued and unpaid fees, disbursements, costs and expenses of the Investment Banker (subject to the Budget), in an amount not to exceed \$500,000 plus any expense reimbursement owed to the Investment Banker (in each case pursuant to the Lazard Engagement Letter) less any amounts paid to the Investment Banker prior to the Petition Date pursuant to the Lazard Engagement Letter (unless the Term DIP Agent and the Required Term DIP Lenders have consented in writing to the payment of any amounts in excess thereof) at any time before or on the date and time of delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of a Carve Out Trigger Notice, whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice, plus (C) after the date and time of the delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of the Carve Out Trigger Notice, to the extent allowed by this Court at any time, all unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors and any official committee of creditors in an aggregate amount not to exceed \$75,000 (the amount set forth in this clause (C) being the “Post-Carve Out Trigger Notice Cap”); provided, however, nothing herein shall be construed to impair the ability of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by the Term DIP Agent at the direction of the Required Term DIP Lenders to the Debtors and their counsel, the U.S. Trustee, and lead counsel to any official committee, which notice may</p>

Description	Credit Facility	Summary of Material Terms
		<p>be delivered following the occurrence of an Event of Default and stating that the Post-Carve Out Trigger Notice Cap has been invoked.</p> <p>For the avoidance of doubt, the Carve-Out shall be senior to all liens and claims (including administrative and superpriority claims) securing the Term DIP Obligations and the Term Obligations, the Bridge Obligations, the Term Adequate Protection Liens and any other liens, security interests, and claims (including administrative and superpriority claims) granted herein to the Term Secured Parties, the Bridge Secured Parties, the Term DIP Agent or the Term DIP Lenders.</p> <p><i>See Interim DIP Term Ord., ¶ 38(i) and (ii).</i></p>
506(c) Waiver	Term DIP Facility	<p>The Carveout includes the following fees and expenses to the extent allowed by the Court: (i) one-half (1/2) of all fees incurred after the Filing Date and prior to the Termination Date required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717 accrued on and after the Filing Date and prior to the Termination Date, (ii) one-half (1/2) of all reasonable fees and expenses incurred by a trustee under Code § 726(b) in an aggregate amount not exceeding \$25,000, (iii) for the period commencing on the Filing Date and ending on the date of delivery of a Carveout Trigger Notice, the lesser of (a) one-half (1/2) of the actual accrued and unpaid fees, disbursements, costs and expenses incurred by the Carveout Professionals during such period, or (b) one-half (1/2) of the amounts set forth in the Budget with respect to each Carveout Professional, and (iv) on and after the date of the delivery of a Carveout Trigger Notice, all unpaid fees, disbursements, costs and expenses incurred by the Carveout Professionals in an aggregate amount not to exceed the Post Carveout Trigger Notice Cap.</p> <p>For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve Out shall be senior to all liens securing the DIP Obligations, the Adequate Protection Liens, all claims and any and all other forms of adequate protection, liens or claims securing the DIP Obligations.</p> <p>Carveout Professionals are defined collectively to include counsel for the Debtors (Debevoise & Plimpton LLP and Young Conaway Stargatt & Taylor, LLP) and financial advisor for the Debtors (Zolfo Cooper LLC) and any professionals or professional firms authorized by the Court to be retained by any Committee.</p> <p><i>See Interim ABL DIP Ord., ¶ 6; Id., Ex. A, ¶¶ 7, 8.</i></p> <p>Upon entry of a Final Order providing for such relief, except for the Carve-Out, no costs or expenses of administration that have been or may be incurred in any of the Cases at any time shall be charged against the Term DIP Agent, any of the Term DIP Lenders, the Term Secured Parties or any of their respective claims or liens (including any claims or liens granted pursuant to the Interim Order) or the DIP Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.</p> <p><i>See Interim DIP Term Ord., ¶¶ I, 42.</i></p>

Description	Credit Facility	Summary of Material Terms
	ABL DIP Facility	<p>Effective upon entry of the Final Order, the Debtors (or any Trustee) agree that there shall be no surcharge of the Postpetition Revolving Loan Collateral for any purpose, unless agreed to by the Prepetition Revolving Loan Agent and the Postpetition Revolving Loan Agent, and the Debtors (or any Trustee) shall be deemed to have waived any rights, benefits or causes of action under Code § 506(c), the enhancement of collateral provisions of Code § 552(b), or any other legal or equitable doctrine (including, without limitation, unjust enrichment) as they may relate to or be asserted against the Prepetition Revolving Loan Agent, Prepetition Revolving Lenders, Postpetition Revolving Loan Agent, Postpetition Revolving Loan Lenders, the Prepetition Revolving Loan Collateral, or the Postpetition Revolving Loan Collateral.</p> <p><i>See Interim ABL DIP Ord., ¶ 4(e).</i></p>
Section 552(b) Waiver	Term DIP Facility	<p>Upon entry of a Final Order providing for such relief, the Pre-Petition 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) shall not apply to the Pre-Petition Agents (on their own behalf and on behalf of the applicable other Pre-Petition Secured Parties) with respect to proceeds, products, offspring, or profits of any of the Pre-Petition Collateral.</p> <p><i>See Interim DIP Term Ord., ¶¶ I, 43.</i></p>
	ABL DIP Facility	<p>Effective upon entry of the Final Order, the Debtors (or any Trustee) agree that there shall be no surcharge of the Postpetition Revolving Loan Collateral for any purpose, unless agreed to by the Prepetition Revolving Loan Agent and the Postpetition Revolving Loan Agent, and the Debtors (or any Trustee) shall be deemed to have waived any rights, benefits or causes of action under Code § 506(c), the enhancement of collateral provisions of Code § 552(b), or any other legal or equitable doctrine (including, without limitation, unjust enrichment) as they may relate to or be asserted against the Prepetition Revolving Loan Agent, Prepetition Revolving Lenders, Postpetition Revolving Loan Agent, Postpetition Revolving Loan Lenders, the Prepetition Revolving Loan Collateral, or the Postpetition Revolving Loan Collateral.</p> <p><i>See Interim ABL DIP Ord., ¶ 4(e).</i></p>
Stipulations to Prepetition Liens and Claims	Term DIP Facility	<p>The Debtors stipulate and acknowledge (i) the validity and enforceability of each of the Pre-Petition Loan Documents and are not subject to any offset, defense, or counterclaims, (ii) the validity and amount of the obligations under the Bridge Loan Facility, Term Loan Facility, and ABL Facility, (iii) the validity, priority, perfection and enforceability of the liens securing the Bridge Loan Facility, Term Loan Facility, and ABL Facility, and (iv) that the Debtors are in default under the Pre-Petition Loan Documents.</p> <p><i>See Interim DIP Term Ord., ¶ E.</i></p>
	ABL DIP Facility	<p>The Debtors stipulate and acknowledge (i) the amount and validity of the obligations under the ABL Loan Agreement, (ii) the validity, priority, perfection and enforceability of the Existing Revolving Liens, and (iii) that the Debtors have no offsets, defenses or counterclaims to the indebtedness under the ABL Loan Agreement.</p> <p><i>See Interim ABL DIP Ord., ¶ D.</i></p>

Description	Credit Facility	Summary of Material Terms
Adequate Protection	Term DIP Facility	<p>The Term Agent, for the benefit of itself, and the Term Lenders shall receive the following as adequate protection for the extent of any diminution in the value in any prepetition secured interests:</p> <p>(i) “replacement” liens on the Term Collateral to the extent of any postpetition Diminution in Value of the Term Secured Parties’ interest in the Term Collateral, which liens will be junior to the DIP Liens, the Term Permitted Prior Liens, the Term Pre-Petition Liens, and the Carve-Out;</p> <p>(ii) liens on the ABL Collateral, which liens will be junior to the DIP Liens, the ABL Permitted Prior Liens, the ABL Pre-Petition Liens, the ABL Senior DIP Liens, the Senior ABL Adequate Protection Liens and the Carve-Out;</p> <p>(iii) a superpriority administrative expense claim in each of the Cases, which claims will be junior only to the Term DIP Obligations, the Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Carve-Out and, with respect to the DIP Collateral, any validly perfected secured claim, and be payable from and have recourse to all assets and property of the Debtors; provided, however, that an amount of the Term Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, rank <i>pari passu</i> with the ABL Superpriority Claims;</p> <p>(iv) payment of all reasonable out-of-pocket fees, costs and expenses of the Term Agent and the Bridge Agent (including all reasonable fees, costs, disbursements and expenses of their outside counsel, King & Spalding LLP, their local counsel and their financial advisor, FTI Consulting Inc.; and</p> <p>(v) access to the Debtors’ books and records and such financial reports as are provided to the DIP Agents.</p> <p>The ABL Agent, for the benefit of itself, and the ABL Lenders shall receive the following as adequate protection for the extent of any diminution in the value of any prepetition secured interests:</p> <p>(i) “replacement” liens on the ABL Collateral and unencumbered assets, which liens will be junior to the ABL Senior DIP Liens, the ABL Pre-Petition Liens, the ABL Permitted Prior Liens, the ABL Permitted Prior Liens and the Carve-Out;</p> <p>(ii) liens on the Term Collateral, which liens will be junior to the DIP Liens, the Term Pre-Petition Liens, the Term Permitted Prior Liens, the ABL Senior DIP Liens, the Senior Term Adequate Protection Liens and the Carve-Out;</p> <p>(iii) a superpriority administrative expense claim in each of the Cases, which claims will be junior only to the Term DIP Obligations, the Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Term Superpriority Claims, the Carve-Out and, with respect to DIP Collateral constituting Term Collateral, any validly perfected secured claim, and be payable from and have recourse to all assets and property of the Debtors; provided, however, that an amount of the ABL Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, rank <i>pari passu</i> with the Term Superpriority Claims;</p> <p>(iv) payment of all reasonable out-of-pocket fees, costs and expenses of the ABL Agent (including all reasonable fees, costs, disbursements</p>

Description	Credit Facility	Summary of Material Terms
		<p>and expenses of its outside counsel, Goldberg Kohn, its local counsel and its financial advisor, Huron Consulting Group Inc.); and (iv) access to the Debtors' books and records and such financial reports as are provided to the DIP Agents</p> <p><i>See Interim DIP Term Ord., ¶¶ G, 14.</i></p>
	ABL DIP Facility	<p>Interim DIP Order provides that the ABL Agent, for the benefit of itself, and the ABL Lenders shall receive the replacement liens, superpriority claim and other adequate protection identified above.</p> <p><i>See Interim ABL DIP Ord., ¶ 4.</i></p>
Waiver/Modification of the Automatic Stay	Term DIP Facility	<p>Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without order of or application or motion to this Court, immediately upon the occurrence and during the continuance of a Termination Event: (a) the Term DIP Agent may (and, at the direction of the Required Term DIP Lenders, shall), by written notice to the Debtors, their counsel, the U.S. Trustee and any counsel for the Committee, if any, terminate the Term DIP Facility, declare the Term DIP Obligations to be immediately due and payable and, subject to the immediately following clause (b), exercise all rights and remedies under the Term DIP Loan Documents and the Interim Order; and (b) the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Term DIP Agent and the Term DIP Lenders to exercise all rights and remedies provided for in the Term DIP Loan Documents, including to take any or all of the following actions, without further order of or application to this Court (as applicable): (i) immediately terminate the Debtors' limited use of any cash collateral; (ii) cease making any extensions of credit under the Term DIP Facility to the Debtors; (iii) declare all Term DIP Obligations to be immediately due and payable; (iv) freeze monies or balances in the Debtors' accounts (and, with respect to the Term DIP Obligations, sweep all funds contained in the TL Deposit Account (as defined in the Term DIP Loan Agreement)); (v) immediately set-off any and all amounts in accounts maintained by the Debtors with the Term DIP Agent or the Term DIP Lenders against the Term DIP Obligations, or otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable Term DIP Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the Term DIP Obligations; and (vi) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the Term DIP Loan Documents or applicable law to effect the repayment of the Term DIP Obligations; provided, however, that prior to the exercise of any right in clauses (i), (v) or (vi) the Term DIP Agent shall be required to provide five (5) calendar days written notice (the "Remedies Notice Period") to the Debtors and the Committee of the Term DIP Agent's intent to exercise such rights and remedies; provided, further, that none of the Debtors, the Committee or any other party-in-interest (other than the ABL Agent, the ABL Lenders, the ABL DIP Agent or the ABL DIP Lenders) shall have the right to contest the enforcement of the remedies set forth in the Interim Order and the Term DIP Loan Documents on any basis other than an assertion that a Termination Event has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable Term DIP Loan Documents. During the Remedies Notice Period, the Debtors and the Committee shall be entitled to seek an emergency</p>

Description	Credit Facility	Summary of Material Terms
		<p>hearing with the Court in connection therewith. With respect to the aforementioned clauses (i), (v) and (vi), unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, or to the extent of an applicable cure period was cured within the applicable cure period as provided under the Term DIP Loan Documents: (i) the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the Term DIP Agent shall be permitted to exercise all rights and remedies set forth herein; (ii) the Debtors shall cooperate fully with the Term DIP Agent and the Term DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise; and (iii) the Debtors shall waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Term DIP Agent and the Term DIP Lenders set forth in the Interim and/or Final Orders and in the Term DIP Loan Documents. Any remedies taken affecting any leases or premises subject to any leases shall be in accordance with applicable federal and state law, the Bankruptcy Code, the governing leases, consent of the applicable landlord (if required), or as otherwise ordered by the Court.</p> <p><i>See Interim DIP Term Ord., ¶¶ 22, 30.</i></p>
	ABL DIP Facility	<p>(a) <u>Effect of Termination Date.</u> Unless extended by the written agreement of the Postpetition Revolving Loan Agent, upon the Termination Date, without further order of Court but subject to one (1) business day's written notice to the Debtors (with a copy to the United States Trustee and counsel to any Committee): (1) the Debtors' authorization to use Cash Collateral and incur Postpetition Revolving Loan Debt hereunder will automatically terminate; and (2) at the Postpetition Revolving Loan Agent's election: (i) the Postpetition Revolving Loan Debt shall be immediately due and payable, (ii) the Debtors shall be prohibited from using Cash Collateral for any purpose other than in accordance with Paragraph 2(c) of this Order unless and until the Debtors obtain an order permitting further Cash Collateral use, and (iii) the Postpetition Revolving Loan Agent shall be entitled to setoff any Cash Collateral in the Postpetition Revolving Loan Agent's possession or control and apply such Cash Collateral in accordance with Paragraph 2(c) of this Order.</p> <p>(b) <u>Rights and Remedies.</u> On the Termination Date, the Prepetition Revolving Loan Agent and the Postpetition Revolving Loan Agent may apply to this Court for all appropriate relief, upon such notice as may be appropriate under the circumstances; provided, however, that: (1) the obligations of the Debtors and the rights of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, and the Postpetition Revolving Loan Lenders with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired, unaffected and governed by the terms of this Order; and (2) subject to the terms of this Order, the Debtors and the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, and the Postpetition Revolving Loan Lenders shall retain all of their respective rights and remedies under the Code, including, without limitation, the Debtors' right to request the continued use of Cash Collateral or to request to incur postpetition indebtedness and</p>

Description	Credit Facility	Summary of Material Terms
		<p>the respective rights of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders to oppose the Debtors' further use of Cash Collateral or incurrence of postpetition indebtedness and to move for relief from the automatic stay.</p> <p><u>Termination Date:</u> The earliest to occur of: (a) the date that is one hundred and fifty (150) days after Filing Date, 2015, (b) the consummation of any sale of all or substantially all of the Postpetition Revolving Loan Collateral of the Debtors pursuant to Code § 363, (c) if the Final Order has not been entered, the date that is forty five (45) calendar days after the Filing Date and (d) upon notice from the Postpetition Revolving Loan Agent to the Debtors, the Prepetition Term Loan Agent, any Committee, and their respective counsel of the existence of the occurrence of an Event of Default.</p> <p>The automatic stay of Code § 362 is modified to the extent necessary to effectuate the relief granted by the Interim DIP Order.</p> <p><i>See Interim ABL DIP Ord., ¶¶ 5(a)-(b), 12; Ex. A, ¶ 33.</i></p>
Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens	Term DIP Facility	<p>The Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of all liens granted herein, including, without limitation, the DIP Liens and the Term Adequate Protection Liens, without the necessity of execution, filing or recording any financing statement, mortgage, notice or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable law) such liens, or to entitle the Term Secured Parties, the Bridge Secured Parties, the Term DIP Agent or the Term DIP Lenders to the priorities granted in the Interim Order.</p> <p><i>See Interim DIP Term Ord., ¶ 23.</i></p>
	ABL DIP Facility	<p>The ABL DIP Liens are valid in each case without any further action by the Debtors or the ABL DIP Agent and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments.</p> <p><i>See Interim ABL DIP Ord., ¶ 3(d)(ii).</i></p>
Releases	Term DIP Facility	<p>Upon entry of a Final Order providing for such relief and subject to the conclusion of the Challenge Period, the Debtors agree to forever waive and release any and all claims and causes of action against the Pre-Petition Secured Parties, the Term DIP Agent and the Term DIP Lenders whether at law or in equity, arising under or relating to the Term DIP Facility, Section 105 and Chapter 5 of the Bankruptcy Code and under any other similar provisions of applicable state or federal law.</p> <p><i>See DIP Term Agt., § 4.17, Interim DIP Term Ord., ¶ 47.</i></p>
	ABL DIP Facility	<p>At and after the conclusion of the Investigation Period with respect to all parties in interest, the Debtors shall be deemed not to hold (and shall be deemed to release) any claims, counterclaims, causes of action, defenses or setoff rights relating to the Prepetition Revolving Loan Documents, the Prepetition Revolving Loan Liens, the</p>

Description	Credit Facility	Summary of Material Terms
		<p>Prepetition Revolving Loan Debt or otherwise, against the Prepetition Revolving Loan Lenders and the Prepetition Revolving Loan Agent, and their respective affiliates, subsidiaries, agents, officers, directors, employees, advisors, consultants, predecessors in interest, successors and assigns.</p> <p><i>See Interim ABL DIP Ord., ¶ D(vii).</i></p>
Indemnification	Term DIP Facility	<p>Subject to the conclusion of the Challenge Period, the Debtors shall jointly and severally indemnify and hold harmless the Term DIP Agent, each Term DIP Lender, any of their affiliates and each of the respective officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives of each in their respective capacities as such (each, an “Indemnified Party”), from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection with or relating to the Term DIP Facility, the Term DIP Loan Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the Term DIP Facility, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby or under the Term DIP Loan Documents are consummated, except, with respect to any Indemnified Party, to the extent such claim, damage, loss, liability or expense is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party’s affiliates or their respective principals, directors, officers, employees, representatives, agents, attorneys or third party advisors. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except, with respect to any Indemnified Party, to the extent such liability is found in a final non appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party’s affiliates or their respective principals, directors, officers, employees, representatives, agents, attorneys or third party advisors. In no event, however, shall any person be liable on any theory of liability for any special, indirect, consequential or punitive damages.</p> <p><i>See Interim DIP Term Ord., ¶ 33.</i></p>
	ABL DIP Facility	<p>The Debtors shall be deemed to indemnify and hold harmless the ABL DIP Agent and the ABL DIP Lenders on the same basis as provided in the Prepetition Revolving Loan Documents but with respect to matters related to the Postpetition Revolving Loan Debt and Postpetition Revolving Loan Collateral, and the administration and interests of Postpetition Revolving Loan Agent and Postpetition</p>

Description	Credit Facility	Summary of Material Terms
		Revolving Loan Lenders therein. <i>See</i> Interim ABL DIP Ord., ¶ 3(c)(x).
Liens on Avoidance Actions	Term DIP Facility	Liens on avoidance actions shall attach subject to entry of a Final Order providing for such relief. <i>See</i> Interim DIP Term Ord., ¶ 6.
	ABL DIP Facility	Liens on avoidance actions shall attach subject to entry of a Final Order providing for such relief. <i>See</i> Interim ABL DIP Ord., Ex. A, ¶ 33.
Challenge Period	Term DIP Facility	The Committee and any other parties in interest (other than the Debtors) are permitted to undertake a Challenge (as defined below). Any party (other than the Debtors, which have waived any Challenge rights), including the Committee, shall have a maximum of sixty (60) calendar days after the appointment of the Committee, if any, but in no event later than the earlier to occur of (x) seventy-five (75) calendar days from entry of the Interim Order and (y) the confirmation hearing with respect to the Chapter 11 Plan (the “ Ch. 11 Challenge Period ”) to investigate and commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, and challenge (each, a “ Challenge ”) the findings, the Debtors’ stipulations, or any other stipulations contained in the Interim Order or any Final Order, including, without limitation, any challenge to the validity, priority or enforceability of the Term Pre-Petition Liens, or to assert any claim or cause of action against the Term Agent, the Bridge Agent, the Term Lenders or the Bridge Lenders arising under or in connection with the Term Loan Documents, the Bridge Loan Documents, the Term Obligations or the Bridge Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Term Obligations or Bridge Obligations, or otherwise. If the Cases are converted to cases under chapter 7 of the Bankruptcy Code prior to the latest date by which the Ch. 11 Challenge Period would end pursuant to the immediately preceding sentence, then any chapter 7 trustee appointed in such converted cases shall have a maximum of sixty (60) calendar days (the “ Ch. 7 Challenge Period ” and, together with the Ch. 11 Challenge Period, the “ Challenge Period ”) after the date that the Cases are converted to bring any such Challenge. The Challenge Period may only be extended: (a) with the prior written consent of counsel to the Term DIP Agent (at the direction of the Required Term DIP Lenders), as memorialized in an order of this Court, or (b) pursuant to an order of this Court upon a showing of good cause for such extension. <i>See</i> Interim DIP Term Ord., ¶ 40.
	ABL DIP Facility	The stipulations and representations of the Debtors contained in the DIP Order shall be binding on all parties in interest in the Cases, unless and solely to the extent that (i) the Debtors receive notice of a potential Challenge during the Investigation Period from a Challenge Party and (ii) the Court rules in favor of the plaintiff in any timely and properly filed Challenge resulting therefrom.

Description	Credit Facility	Summary of Material Terms
		<p><u>Investigation Period.</u> (a) With respect to any Challenge Party other than the Committee, the period from the Filing Date until the date that is the earlier of seventy-five (75) days after the entry of this Order and the date of the confirmation hearing of the Debtors' plan of reorganization; (b) with respect to the Committee, the period from the Filing Date until the date that is the earliest of sixty (60) days after the date that a Committee is formed, seventy-five (75) days after the entry of this Order, and the date of the confirmation hearing of the Debtors' plan of reorganization; and (c) if these Cases are converted to cases under chapter 7 of the Code prior to the latest date by which the Investigation Period would end pursuant to the preceding clauses (a) and (b), with respect to the chapter 7 trustee, the period ending on the date that is sixty (60) days after the date that these Cases are converted.</p> <p><u>Challenge Procedure.</u> During the Investigation Period, a Challenge Party shall be entitled to determine whether a good faith basis to assert a Challenge exists. If a Challenge Party identifies a good faith basis to assert a Challenge, it shall notify the Debtors during the Investigation Period of its demand that the Debtors initiate an action or adversary proceeding relating thereto (a "Challenge Notice"). The Debtors shall notify the applicable Challenge Party of whether the Debtors intend to initiate such action or adversary proceeding, or enter into a settlement of the matters subject to such Challenge, within five (5) business days of receipt of a Challenge Notice. If the Debtors elect to initiate such action or adversary proceeding, or file a motion to settle such Challenge, they must do so within ten (10) business days of such notice to a Challenge Party. If the Debtors do not timely notify such Challenge Party that the Debtors intend to initiate the action or adversary proceeding or a settlement of the matters related to the Challenge Notice, do not timely initiate such action or adversary after timely notice, or notify the Challenge Party that the Debtors do not intend to initiate such action or adversary proceeding, then in each such case the Challenge Party shall have ten (10) business days from the applicable date to initiate such action or adversary proceeding. Nothing herein shall be deemed to grant standing in favor of any Challenge Party absent further order of this Court. The Debtors shall at all times retain authority to prosecute, settle or compromise any Challenge in the exercise of their business judgment and subject to any applicable further order of court.</p> <p><i>See Interim ABL DIP Ord., ¶ 7; Id., Ex. A, ¶ 23.</i></p>
No Priming or Pari Passu Liens	Term DIP Facility	<p>Except as expressly set forth herein, absent further order of the Court, the DIP Liens shall not be made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Cases, and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, and/or upon the dismissal of any of the Cases or any Successor Cases, subject only to the Carve-Out. The DIP Liens shall not be subject to (i) Sections 510, 549 or 550 of the Bankruptcy Code, or (ii) upon entry of a Final Order providing for such relief, Sections 506(c) or 551 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the DIP Liens.</p>

Description	Credit Facility	Summary of Material Terms
		<i>See</i> DIP Term Agt., § 4.14(f); Interim DIP Term Ord., ¶ 7(b)
	ABL DIP Facility	<p>It shall be an Event of Default if an order shall be entered in any Bankruptcy Case that (a) other than the Financing Order, permits Borrower or any Subsidiary of Borrower to incur Indebtedness (other than the Term Debt to the extent set forth in the Financing Order) secured by any Lien under Bankruptcy Code Section 364(c)(1) or by a Lien <i>pari passu</i> with or superior to the Lien granted under the Loan Documents and the Existing Loan Documents and Bankruptcy Code Sections 364(c)(2) or (d) (other than the Liens securing the Term Debt to the extent set forth in the Financing Order), unless (i) all of the Obligations and Existing Secured Obligations have been Paid in Full at the time of the entry of any such order, or (ii) the Obligations and the Existing Secured Obligations are Paid in Full with such Indebtedness, or (b) permits Borrower or any Subsidiary of Borrower the right to use Collateral other than in accordance with the terms of the Financing Order, unless all of the Obligations and Existing Secured Obligations shall have been Paid in Full.</p> <p><i>See</i> ABL DIP Agt., § 8.22.</p>

Relief Requested

8. The Debtors seek entry of the Interim DIP Orders and, pending the Final Hearing, the Final DIP Orders, in each case:
- a. authorizing the Debtors to enter into the Term DIP Facility, which shall include loans to be advanced and made available to the Borrowers in the aggregate principal amount of \$60 million, including up to \$35 million following entry of the Interim DIP Order and satisfaction of other conditions to borrowing, pursuant to the terms and conditions of the Term DIP Loan Agreement;
 - b. authorizing the Debtors to enter into the ABL DIP Facility, which shall consist of revolving loans and letters of credit to be advanced and made available to the Borrowers in the maximum aggregate principal amount of \$85 million, which may be available upon entry of the Interim DIP Order and subject to satisfaction of other conditions to borrowing, pursuant to the terms and conditions of the ABL DIP Credit Agreement;
 - c. ordering that all obligations of the Borrowers under the Term DIP Facility shall be, subject to the Carve-Out:
 - (i) subject to certain Permitted Priority Liens, secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by priming, first

priority security interests in and liens (collectively, the “**Priming DIP Liens**”) on all Term Collateral;

- (ii) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by junior priority (junior only to the ABL DIP Liens, ABL Permitted Prior Liens, and liens securing the ABL Facility, including related replacement liens) security interests in and liens on the ABL Collateral;
 - (iii) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by a first priority lien on, and security interests in, the TL Deposit Account;
 - (iv) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by first priority liens on and security interests in unencumbered assets of the Debtors; provided that such liens shall be *pari passu* with the ABL DIP Liens granted to secure the Incremental ABL DIP Amount;
 - (v) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by junior perfected liens on and security interests in all present and after-acquired property of the Debtors that is (i) subject to a perfected lien or security interest on the Petition Date or subject to a lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code; or (ii) constitutes ABL Collateral (the liens granted in subparagraphs (i)-(v), the “**Term DIP Liens**”);
- d. ordering that, all obligations of the Borrowers under the ABL DIP Facility shall be, subject to the Carve-Out,:
- (i) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by second priority liens on, and security interests in, all present and after-acquired property that consist of the ABL Collateral, which lien shall be junior only to the liens securing the ABL Facility, including related replacement liens, and certain Permitted Priority Liens;
 - (ii) secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by junior liens on, and security interests in, all present and after-acquired property that consist of the Term Collateral, junior only to the liens securing the Term DIP Facility, Bridge Loan Facility, and Term Loan Facility, replacement liens granted to secure the Term Loan Facility, and certain valid and enforceable permitted liens senior to the liens of the Bridge Lenders or the Term Lenders; and

- (iii) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by second priority liens on and security interests in, all unencumbered assets of the Debtors (including, without limitation, upon entry of a Final Order, avoidance actions and proceeds of avoidance actions under chapter 5 of the Bankruptcy Code); provided that such liens shall be *pari passu* with the with the liens of the Term DIP Agent on such other assets to the extent such lien of the ABL DIP Agent secures the Incremental DIP Amount, and shall be otherwise junior only to any such lien of the Term DIP Agent (the liens granted in subparagraphs (i)-(iii), the “**ABL DIP Liens**,” and together with the Term DIP Liens, the “**DIP Liens**”);
- e. authorizing the Debtors to use any and all “cash collateral” as defined in section 363 of the Bankruptcy Code, in which the Pre-Petition Secured Parties or Pre-Petition Agents on behalf of the DIP Agents has a lien or security interest as provided by the DIP Orders approving the ABL DIP Facility (“**Cash Collateral**”);
- f. ordering that, the Term Agent, for the benefit of itself, and the Term Lenders shall receive the following as adequate protection (the “**Term Adequate Protection**”) for the extent of any diminution in the value of the prepetition security interests whether or not such diminution in value results from (i) the sale, use, or lease of the collateral securing the Term Obligations (including, without limitation, Cash Collateral), (ii) the granting of priming liens to secure the Term DIP Facility, or (iii) the imposition of the automatic stay:
 - (i) continuing, valid, binding, enforceable and perfected postpetition liens on the Term Collateral (the “**Senior Term Adequate Protection Liens**”), which liens will be junior to the DIP Liens, the Term Permitted Prior Liens, the Term Pre-Petition Liens and the Carve-Out;
 - (ii) continuing, valid, binding, enforceable and perfected postpetition “replacement” liens on the ABL Collateral (the “**Junior Term Adequate Protection Liens**”; together with the Senior Term Adequate Protection Liens, the “**Term Adequate Protection Liens**”), which liens will be junior to the DIP Liens, the ABL Permitted Prior Liens, the ABL Pre-Petition Liens, the ABL Senior DIP Liens, the Senior ABL Adequate Protection Liens and the Carve-Out;
 - (iii) a superpriority administrative expense claim in each of the Cases (the “**Term Superpriority Claims**”), which claims will be junior only to the Term DIP Obligations, the Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Carve-Out and, with respect to the DIP Collateral, any validly perfected secured claim,

and be payable from and have recourse to all assets and property of the Debtors; provided, however, that an amount of the Term Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, rank *pari passu* with the ABL Superpriority Claims;

- (iv) payment of all reasonable out-of-pocket fees, costs and expenses of the Term Agent (including all reasonable fees, costs, disbursements and expenses of its outside counsel, King & Spalding LLP, its local counsel and its financial advisor, FTI Consulting Inc.); and
 - (v) access to the Debtors' books and records and such financial reports as are provided to the DIP Agents;
- g. ordering that the ABL Agent, for the benefit of itself, and the ABL Lenders shall receive the following as adequate protection (the "**ABL Adequate Protection**") for the extent of any diminution in the value of any Cash Collateral or other collateral whether or not arising as a result of (i) the sale, use, or lease of the collateral securing the obligations under the ABL Facility (including, without limitation, Cash Collateral), or (ii) the imposition of the automatic stay:
- (i) continuing, valid, binding, enforceable and perfected postpetition "replacement" liens on the ABL Collateral and unencumbered assets (the "**Senior ABL Adequate Protection Liens**"), which liens will be junior to the ABL Senior DIP Liens, the ABL Pre-Petition Liens, the ABL Permitted Prior Liens, and the Carve-Out;
 - (ii) continuing, valid, binding, enforceable and perfected postpetition "replacement" liens on the Term Collateral (the "**Junior ABL Adequate Protection Liens**"; together with the Senior ABL Adequate Protection Liens, the "**ABL Adequate Protection Liens**"), which liens will be junior to the DIP Liens, the Term Pre-Petition Liens, the Term Permitted Prior Liens, the ABL Senior DIP Liens, the Senior Term Adequate Protection Liens and the Carve-Out;
 - (iii) a superpriority administrative expense claim in each of the Cases (the "**ABL Superpriority Claims**" and, together with the Term Superpriority Claims, the "**DIP Superpriority Claims**"), which claims will be junior only to the Term DIP Obligations, the Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Term Superpriority Claims, the Carve-Out and, with respect to DIP Collateral constituting Term Collateral, any validly perfected secured claim, and be payable from and have recourse to all assets

and property of the Debtors; provided, however, that an amount of the ABL Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, *rank pari passu* with the Term Superpriority Claims;

- (iv) payment of all reasonable out-of-pocket fees, costs and expenses of the ABL Agent (including all reasonable fees, costs, disbursements and expenses of its outside counsel, Goldberg Kohn, its local counsel and its financial advisor, Huron Consulting Group Inc.); and
- (iv) access to the Debtors' books and records and such financial reports as are provided to the DIP Agents;
- h. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim DIP Orders or the Final DIP Orders, as applicable;
- i. scheduling the Final Hearing to consider entry of the Final DIP Orders and approving the form of notice with respect to the Final Hearing; and
- j. granting related relief.

The Debtors' Prepetition Capital Structure

9. As of March 31, 2015, the Debtors reported total assets of approximately \$299 million and total liabilities of approximately \$461 million. As of the Petition Date, the obligations outstanding under the Debtors' pre-petition secured facilities are estimated at the following amounts:

	\$ millions
ABL Facility	\$33
Term Loan Facility	\$214
Bridge Loan Facility	\$6.6
TOTAL	\$253.6

I. The ABL Facility.

10. Boomerang is the borrower, and BT Financing and BTCSP are guarantors, under an amended and restated credit agreement, dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "**ABL Loan Agreement**"),

among Boomerang, the several financial institutions from time to time party thereto (the “**ABL Lenders**”) and Wells Fargo Capital Finance, LLC, as administrative agent for the ABL Lenders (in such capacity, the “**ABL Agent**” and together with the ABL Lenders, the “**ABL Secured Parties**”), which provides Boomerang with an asset-based revolving credit facility with aggregate commitments of up to \$85 million, subject to a borrowing base limitation based on the Debtors’ eligible accounts receivable and inventory (the “**ABL Facility**”). The ABL Facility matures on August 11, 2017.

11. The ABL Facility is secured on a first-priority basis by certain current assets of the Debtors, such as cash, accounts (other than the TL Deposit Account) and payment intangibles, inventory, and deposit accounts and all proceeds from such property and assets (the “**ABL Collateral**”). Certain advances under the ABL Facility not to exceed \$2,774,000 (the “**Priority ABL Obligations**”) are secured on a first-priority basis by the Term Collateral.

II. The Term Loan Facility.

12. Boomerang is the borrower, and BT Financing and BTCSP are guarantors, under a credit agreement, dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “**Term Loan Agreement**”), among Boomerang, the lenders from time to time party thereto (the “**Term Lenders**”) and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the Term Lenders (in such capacity, the “**Term Agent**” and together with the Term Lenders, the “**Term Secured Parties**”), which provided term loans in aggregate principal amount of \$230,000,000 (the “**Term Loan Facility**”). The Term Loan Facility matures on October 11, 2017.

13. The Term Loan Facility is secured on a third-priority basis by all of the assets of the Debtors that do not constitute ABL Collateral, including the TL Deposit Account, the capital stock of each of the present and future subsidiaries of Boomerang, all owned real

property, equipment and fixtures, investment property, and intellectual property, and all proceeds from such property and assets (the “**Term Collateral**”). The liens held by the Term Agent are subordinate to those liens held to secure the Debtors’ obligations under the Bridge Loan Agreement and the Priority ABL Obligations.

14. Principal amortization is payable in consecutive quarterly installments, in the amount of 1.25% of the aggregate par principal amount of the loans outstanding on the Term Loan Facility closing date, until maturity. Boomerang is obligated to make mandatory prepayments upon the occurrence of certain events, including additional debt issuances, certain asset sales, and excess cash flow generation.

III. The Bridge Loan Facility.

15. As described more fully in the First Day Declaration, to address the Debtors’ liquidity needs during restructuring negotiations, on April 6, 2015, Boomerang and certain Term Lenders entered into that certain credit agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**Bridge Loan Agreement**”), among Boomerang, the lenders from time to time party thereto (the “**Bridge Lenders**”) and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the Bridge Lenders (in such capacity, the “**Bridge Agent**”) and together with the Bridge Lenders, the “**Bridge Secured Parties**” and, collectively with the ABL Secured Parties and the Term Secured Parties, the “**Pre-Petition Secured Parties**”), which provided term loans in an aggregate principal amount of up to \$6.2 million (the “**Bridge Loan Facility**”). Boomerang is the borrower, and BT Financing and BTCSP are guarantors, under the Bridge Loan Facility.

16. The Bridge Loan Facility matured on June 5, 2015 and is secured on a first-priority basis by the Term Collateral, subject only to the liens securing the Priority ABL Obligations.

IV. The Intercreditor Agreement.

17. The relative rights of the ABL Lenders, the Bridge Lenders, and the Term Lenders with respect to the ABL Collateral and Term Collateral are governed by that certain amended and restated intercreditor agreement, dated as of April 6, 2015 (the “**Intercreditor Agreement**”), by and among the Debtors, the ABL Agent, the Bridge Agent and the Term Agent.

18. The Intercreditor Agreement would be modified by the proposed Interim DIP Orders to account for the Debtors’ anticipated incurrence of debt under the DIP Facilities and to govern the relative rights and remedies of the Bridge Lenders, the Bridge Agent, the Term Lenders, the Term Agent, the ABL Lenders, the ABL Agent, the Term DIP Lenders, the Term DIP Agent, the ABL DIP Lenders and the ABL DIP Agent.

The Debtors Have an Immediate Need for Cash

19. As noted above, the Debtors propose to use the DIP Financing and Cash Collateral to satisfy employee wages, employee benefits, certain other operational expenses as set forth in the Budget, and to fund administration of these chapter 11 estates. Without access to the DIP Financing and Cash Collateral to satisfy these obligations, the Debtors will have insufficient funds to pay wages for their employees, preserve and maximize the value of their estates, and administer these chapter 11 cases. Thus, the Debtors’ access to the DIP Financing and Cash Collateral will facilitate their efforts to maximize value for their stakeholders. Absent approval of the Interim DIP Orders, the Debtors will not have access to the DIP Financing or the Cash Collateral necessary to fund administration of these chapter 11 estates, causing immediate and irreparable harm to the value of the Debtors’ estates to the detriment of all stakeholders and other parties in interest.

Alternative Sources of Financing Are Not Readily Available

20. The Debtors do not believe that alternative sources of financing are readily available. Additionally, the Debtors do not believe that it would be prudent, or even possible, to administer these chapter 11 estates on a “cash collateral” only basis. As noted above, without access to the DIP Facilities, the Debtors have extremely limited cash on hand, and do not expect to be able to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs and the projected costs of these chapter 11 cases. In addition, substantially all of the Debtors’ assets are encumbered by liens arising under the Bridge Loan Agreement, Term Loan Agreement and ABL Loan Agreement. As a result, the Debtors do not believe that third-party debtor-in-possession financing would be reasonably available given the Debtors’ existing capital structure.

21. Indeed, the Debtors, after consulting their advisors, believe that because any potential sources of financing (outside of the Pre-Petition Secured Parties) would undoubtedly insist on priming the Pre-Petition Secured Parties, such outside financing was not a feasible option. Without the consent of the Pre-Petition Secured Parties, any attempts at non-consensual priming of the Pre-Petition Secured Parties’ liens would likely involve a costly, extended, and contested hearing. The Debtors do not believe that they would be able to demonstrate adequate protection for the non-consensual priming of the Pre-Petition Secured Parties’ liens. Moreover, any such outside financing would expose the Debtors to the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees.

22. In contrast, the proposed DIP Facilities offered by the Term Lenders and ABL Lenders (*i.e.*, the DIP Lenders) will allow the Debtors to avoid the need to engage in a costly and time-consuming priming fight at the outset of these chapter 11 cases. Accordingly,

the Debtors believe that the DIP Facilities provide, on balance, a more attractive postpetition financing proposal than alternative postpetition financing obtained from a third-party. Further, the DIP Facilities are the product of extensive good faith, arms'-length negotiations with the DIP Lenders and are an essential component of the broader restructuring transaction contemplated by that certain Plan Support Agreement, dated as of June 8, 2015 (the "**Plan Support Agreement**"), by and among the Debtors, the Debtors' controlling equityholder, the Term Secured Parties party thereto, the Bridge Secured Parties party thereto and the ABL Secured Parties party thereto, which was heavily negotiated prior to the Petition Date. Moreover, the DIP Facilities represent the only viable financing available that would not require the Debtors to seek to prime the Pre-Petition Secured Parties' liens on a nonconsensual basis.

Provisions to be Highlighted Pursuant to Local Rule 4001-2

23. In accordance with Local Rule 4001-2, the following provisions of the DIP Facilities are highlighted below. As discussed in detail herein, the Debtors believe that these provisions are reasonable in light of the facts and circumstances of these chapter 11 cases and should be approved.

- a. **Local Rule 4001-2(a)(i)(A) — *Cross-Collateralization Protection.*** The DIP Orders do not provide for cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors.
- b. **Local Rule 4001-2(a)(i)(B) — *Challenge Period.*** The Challenge Period under the Term DIP Facility for any party interest (other than the Debtors, which have waived any Challenge tights) is the period that terminates sixty (60) days after the appointment of the Committee, if any, but in no event later than the earlier to occur of (x) seventy-five (75) calendar days from entry of the Interim Order and (y) the confirmation hearing with respect to the Plan (the "**Ch. 11 Challenge Period**"). If these chapter 11 cases are converted to cases under chapter 7 cases prior to the latest date by which the Ch. 11 Challenge Period would end pursuant to the immediately preceding sentence, then any chapter 7 trustee appointed in such converted cases shall have a maximum of sixty (60) calendar days (the "**Ch. 7 Challenge Period**" and, together with the Ch. 11

Challenge Period, the “**Challenge Period**”) after the date that the Cases are converted to bring any such Challenge. *See* Interim DIP Term Ord., ¶ 40.

The Challenge Period under the ABL DIP Facility is (a) with respect to any Challenge Party other than the Committee, the period from the Petition Date until the date that is the earlier of seventy-five (75) days after the entry of the Interim Order and the date of the confirmation hearing of the Plan; (b) with respect to the Committee, the period from the Petition Date until the date that is the earliest of sixty (60) days after the date the Committee is formed, seventy-five days after the entry of the Interim Order, and the date of the confirmation hearing of the Plan; (c) if these chapter 11 cases are converted to chapter 7 cases, prior to the latest date by which the period would end pursuant to the preceding clauses (a) and (b), with respect to the chapter 7 trustee, the period ending on the date that is sixty (60) days after the date of conversion. *See* Interim ABL DIP Ord., ¶ 7.

- c. **Local Rule 4001-2(a)(i)(C) — 506(c) Waiver.** Subject to entry of the Final DIP Orders that provide such relief, the DIP Collateral shall not be subject to surcharge pursuant to section 506(c) of the Bankruptcy Code. *See* Interim DIP Term Ord., ¶ 42; Interim ABL DIP Ord., ¶ 4(e).
- d. **Local Rule 4001-2(a)(i)(D) — Liens on Avoidance Actions.** Upon entry of the Final DIP Orders that provide such relief, avoidance actions and proceeds of avoidance actions will constitute a portion of the DIP Collateral. *See* Interim DIP Term Ord., ¶ 6; Interim ABL DIP Ord., Ex. A ¶ 33.
- e. **Local Rule 4001-2(a)(i)(E) — Repayment Features.**

The ABL DIP Facility includes a “gradual roll-up” feature wherein the application of the Cash Collateral will first be applied to pay down the ABL Facility (other than the Sponsor Guaranteed Amount and Prepetition Priority ABL Debt). Upon entry of a Final Order, to the extent that amounts under the ABL Facility remain outstanding, a ABL DIP Facility advance will be used to repay any remaining balance exceeding the Sponsor Guaranteed Amount and Prepetition Priority ABL Debt. *See* Interim ABL DIP Ord., ¶ 2(c).

The Term DIP Facility provides for the repayment in full of the Bridge Obligations through the issuance of DIP Loans upon entry of the Interim Order. *See* Interim DIP Term Ord., ¶ 11(a), Budget.

- f. **Local Rule 4001-2(a)(i)(F) — *Disparate Carve-Out Treatment*.** The DIP Orders do not provide for disparate treatment for the professionals retained by a creditors’ committee from those professionals retained by the Debtors with respect to the Carve-Outs.
- g. **Local Rule 4001-2(a)(i)(G) — *Nonconsensual Priming*.** The Term DIP Facility will provide the Term DIP Lenders with *consensual* priming liens on the collateral currently secured by the existing liens of the Bridge Lenders and Term Lenders. *See* Interim DIP Term Ord., ¶ 6.
- h. **Local Rule 4001-2(a)(i)(H) — *Section 552(b)(1)*.** The proposed waiver of “equities of the case” claims under section 552(b)(1) of the Bankruptcy Code will only be effective after entry of the Final Orders providing for such relief. *See* Interim DIP Term Ord., ¶ 43; Interim ABL DIP Ord., ¶ 4(e).

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Postpetition Financing through the DIP Loan Documents.

A. Entering into the DIP Loan Documents Is an Exercise of the Debtors’ Sound Business Judgment.

24. The Court should authorize the Debtors, as an exercise of the Debtors’ sound business judgment, to enter into the DIP Loan Documents, obtain access to the DIP Facilities, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and

prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“Cases permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest.”).

25. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

26. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the debtors offered by a proposed postpetition facility. For example, in *In re Ion Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful

reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

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

27. The Debtors' determination to move forward with the DIP Facilities is an exercise of their sound business judgment following an arms'-length process and careful evaluation of alternatives. Specifically, and in the face of limited cash on hand, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to support their operational and restructuring activities. Accordingly, the Debtors negotiated the Term DIP Loan Agreement, the ABL DIP Credit Agreement, and the other DIP Loan Documents with the DIP Lenders in good faith, at arms' length, and with the assistance of their advisors, and the Debtors believe that they have obtained the best financing available.

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

28. The Debtors propose to obtain financing under the DIP Facilities by providing security interests and liens as set forth above pursuant to section 364(c) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

29. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, i.e., by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re Ames Dep't Stores, 115 B.R. at 37-39; *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

30. As described above, prior to negotiating the DIP Facilities, the Debtors, together with their advisors, considered other sources of postpetition financing to determine whether the Debtors could obtain debtor in possession financing on better terms. Based on current capital market conditions, after consultation with their advisors, the Debtors determined that postpetition financing on an unsecured basis would be unobtainable. Without postpetition financing, the Debtors will not be able to preserve and maximize the value of their estates. Absent sufficient financing to operate the Debtors' business during these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facilities, as set forth in the DIP Loan Documents, are fair, reasonable, and adequate, all as more fully set forth below.

31. In the event that a debtor is unable to obtain unsecured credit, section 364(c)(1) of the Bankruptcy Code provides that the debtor may obtain credit that is secured by an administrative expense claim having priority "over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]." As described above, the

Debtors are unable to obtain unsecured credit. Therefore, approving the DIP Superpriority Claims in favor of the DIP Lenders is reasonable and appropriate. Further, subsections 364(c)(2) and (c)(3) of the Bankruptcy Code provides that the debtor may obtain credit that is secured by lien on property of the estate that is not otherwise subject to a lien or secured by a junior lien on property of the estate that is subject to a lien. As the Debtors are unable to obtain the critical financing they need to administer their chapter 11 cases from any other source, they respectfully represent that granting DIP Liens to the DIP Lenders on unencumbered property and/or a junior lien basis is warranted under the circumstances.

C. The Debtors Should Be Authorized to Obtain Postpetition Financing Secured by First Priority Priming Liens.

32. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lienholders, if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facilities if they are unable to obtain unsecured or junior secured credit and either (a) the Pre-Petition Secured Parties have consented or (b) the Pre-Petition Secured Parties’ interests in collateral are adequately protected.

33. Here, the Debtors seek authority to enter into the Term DIP Facility,⁴ which will provide the Term DIP Lenders priming liens on the collateral currently encumbered by the existing liens of the Bridge Secured Parties and Term Secured Parties (and, to the extent of the Prepetition Priority ABL Debt, the ABL Secured Parties), . Importantly, the required Bridge Lenders and Term Lenders have consented to the Term DIP Facility and the priming liens granted thereunder. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

D. No Comparable Alternative to the DIP Facilities Is Reasonably Available.

34. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, 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.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

⁴ The ABL DIP Facility does not seek to prime any existing liens.

35. As noted above, the Debtors do not believe that alternative sources of financing are reasonably available. Substantially all the Debtors' assets are encumbered by liens arising under their prepetition lending facilities, and the Debtors believe that the Term Lenders are materially undersecured. Moreover, as discussed above, third-party debtor-in-possession financing was not a feasible option given the Debtors' existing capital structure. Thus, the Debtors have determined that the DIP Facilities provide the best option forward under the circumstances to both fund these chapter 11 cases and provide a clear path toward the confirmation and consummation of the plan contemplated by the Plan Support Agreement. Therefore, the Debtors submit that the requirements of sections 364 of the Bankruptcy Code are satisfied.

E. The Repayment Features of the ABL DIP Facility and Term DIP Facility Are Appropriate.

36. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

37. The repayment function of the ABL Facility is a sound exercise of the Debtors' business judgment. The ABL Facility is structured as an asset-based revolving credit facility, such that the Debtors' cash receipts are swept on a daily basis to pay down outstanding

loans, and the Debtors are able to re-borrow loans, pursuant to the borrowing base limitations. Continuing this prepetition practice, the ABL DIP Facility contemplates applying proceeds from cash collected by the Debtors in the ordinary course of their operations, or cash generated from the Postpetition Revolving Loan Collateral (as defined in the Interim Order for the ABL DIP Facility), to pay down the ABL Facility, and then issuing new borrowings under the ABL DIP Facility. Upon entry of a Final Order, to the extent that amounts under the ABL Facility remain outstanding, an ABL DIP Facility advance will be used to repay any remaining balance exceeding the Sponsor Guaranteed Amount (as defined in the Interim Order for the ABL DIP Facility). This structure allows the ABL Facility to be substantially “rolled-up” into the ABL DIP Facility during the course of these chapter 11 cases. The ABL Lenders, in their capacity as the ABL DIP Lenders, have agreed to continue extending credit under the ABL DIP Facility, even though they could not be compelled to do so on a postpetition basis, and, therefore, it is reasonable to allow the ABL DIP Facility to continue to function in the same manner as the ABL Facility—paying down past loans with cash proceeds, and issuing new loans.

38. The repayment in full of the Bridge Loan Facility is equally justified. The Bridge Loan Facility was intended as a short-term bridge loan to provide additional liquidity for the Debtors to prepare an orderly commencement of these chapter 11 cases. The Bridge Loan Facility was provided just weeks prior to the filing of these cases, at a time when the Debtors had insufficient funds to continue their operations and faced immediate shut down of their operations, which would have included furloughs of the vast majority of the Debtors’ employees. Absent the Bridge Loan Facility, the Debtors would not have been able to prepare for the filing of these cases. Since the Bridge Loan Facility was provided, the Debtors have been able to negotiate a Plan Support Agreement and prepare for an orderly bankruptcy filing and a smooth transition into chapter 11. Moreover, because the Bridge Lenders are the same entities as the

Term DIP Lenders, payment of the Bridge Lenders is essentially an administrative convenience in light of the economic realities of these cases.

39. Moreover, the ABL Lenders and Bridge Lenders are likely oversecured. Where, as here, a prepetition secured creditor is oversecured, repaying such creditor that stands to receive payment in full with postpetition loans will not harm the Debtors' estates and other creditors. In contrast, absent the DIP Facilities, the Debtors' ability to continue operating as a going concern will be jeopardized to the detriment of all parties in interest. Thus, the DIP Facilities' "roll up" features merely affect the timing, not the amount, of the ABL Lenders' and Bridge Lenders' respective recoveries. And the only holders of undersecured funded debt — the Term Lenders — support the relief requested as DIP Lenders. Given these circumstances, the repayment features are reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

40. Repayment of prepetition debt is a common feature in debtor-in-possession financing arrangements. Courts in this jurisdiction have approved similar DIP features on the first day of the case. *See, e.g., EveryWare Global, Inc.*, No. 15-10743 (LSS) (Bankr. D. Del. April 10, 2015) (authorizing ABL DIP Facility providing for collection and payment related to ABL Collateral be first applied to pay down prepetition ABL Facility); *In re Tactical Intermediate Holdings, Inc.*, No. 14-11659 (KG) (authorizing \$2.8 million DIP that included full roll-up of bridge loan in the approximate amount of \$1 million pursuant to interim order); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Mar. 5, 2014) (authorizing approximately \$200 million DIP that included roll-up of approximately \$144 million prepetition debt pursuant to interim order); *In re Furniture Brands Int'l, Inc.*, No. 13-12329 (CSS) (Bankr.

D. Del. Sept. 11, 2013) (authorizing approximately \$140 million DIP that included roll-up of approximately \$91 million prepetition debt pursuant to interim order).⁵

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

41. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) permits a debtor in possession to use cash collateral with the consent of the secured party. Here, the Pre-Petition Secured Parties consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim DIP Orders.

42. Section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

⁵ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available on request of the Debtors' proposed counsel.

43. As described more fully above and in the Interim DIP Orders, the Debtors propose to provide the Term Lenders with the Term Adequate Protection, which provides two primary forms of adequate protection to protect against the postpetition diminution in value of the Term Lenders' security interests, whether resulting from the use, sale, or lease of the Term Collateral by the Debtors, the priming liens, or the imposition of the automatic stay, namely, the Term Adequate Protection Liens and the Term Superpriority Claims. The Term Adequate Protection also includes financial reporting and the payment of certain fees and expenses to the Term Agent. Accordingly, the proposed Term Adequate Protection provisions are sufficient to protect the Term Lenders from any diminution in value to the Term Collateral. In light of the foregoing, the Debtors submit, and the Term Lien Lenders agree, that the proposed Term Adequate Protection to be provided for the benefit of the Term Loan Lenders is appropriate.

44. Additionally, as described more fully above and in the Interim DIP Orders, the Debtors propose to provide the ABL Lenders with the ABL Adequate Protection, which provides two primary forms of adequate protection to protect against the postpetition diminution in value of the ABL Lenders' security interests, whether resulting from the use, sale, or lease of the ABL Collateral by the Debtors or the imposition of the automatic stay, namely, the ABL Adequate Protection Liens and the ABL Superpriority Claims. The ABL Adequate Protection also includes financial reporting and, as more fully discussed above, a gradual roll-up of obligations under the ABL Loan Agreement. Accordingly, the proposed ABL Adequate Protection provisions are sufficient to protect the ABL Lenders from any diminution in value resulting from the use of the Cash Collateral. In light of the foregoing, the Debtors submit, and the ABL Lenders agree, that the proposed ABL Adequate Protection to be provided for the benefit of the ABL Lenders is appropriate.

45. Thus, the Debtors' provision of the Term Adequate Protection and ABL Adequate Protection is not only necessary to protect against any diminution in value, but is fair and appropriate under the circumstances of these chapter 11 cases to ensure that the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim DIP Orders, for the benefit of all parties in interest and their estates.

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and the DIP Lenders under the DIP Loan Documents.

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

- a. a commitment fee of 2% of the principal amount of the Term DIP Facility payable in case on the Closing Date;
- b. an administrative agency fee of \$35,000 payable in cash to the Term DIP Agent on the Closing Date;
- c. a "Backstop Exit Fee" for the Backstop Exit Lenders to backstop the Exit Term Facility, to be shared by the Backstop Exit Lenders pro rata in accordance with their respective backstop commitments, as follows: upon the closing of the Exit Term Facility, 10% of the equity in the reorganized Borrower; provided, however, that in the event of 100% Term Lender Consent, then the Backstop Fee shall be 10% of the equity of Holdings (instead of 10% of the equity of the reorganized Borrower);⁶
- d. closing fee in an amount equal to \$300,000, payable ratably for the benefit of the ABL DIP Lenders, and \$150,000 earned and payable upon first election by the Borrower to incur an Incremental DIP Advance with the prior written consent of the DIP Term Agent;
- e. an applicable Unused Revolver Fee of 0.50% per annum; provided, that, if as of any date of determination, the average Daily Balance of the Revolver Usage during the immediately preceding month is more than 50% of the Maximum Revolver Amount, the Applicable Unused Revolver Fee means 0.375% per annum; and
- e. letter of credit, appraisal and examination fees to the ABL DIP Lenders.

⁶ All Term Lenders were given the opportunity to provide, and are actually providing, such backstop.

47. The fees associated with obtaining the DIP Facilities are usual and customary and within the range of reasonableness. Indeed, courts routinely authorize debtors to pay fees similar to those the Debtors propose to pay, where the associated financing is, in the debtor's business judgment, beneficial to the debtor's estate. *See, e.g., In re EveryWare Global Inc.*, No. 15-10743 (LSS) (Bankr. D. Del. April 8, 2015) (approving 1.0% backstop fee, 2.0% original issue discount, and exit conversion fee payable in the form of common stock in an amount equal to 10% of the pro forma common stock); *In re Sea Launch Co., L.L.C.*, No. 09-12153 (BLS) (Bankr. D. Del. May 12, 2010) (approving 3.75 percent DIP break-up fee); *In re Aleris Int'l. Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. Mar. 18, 2009) (approving 3.5 percent exit fee and 3.5 percent front-end net adjustment against each lender's initial commitment); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Jan. 30, 2008) (approving 2.5 percent fee related to refinancing and extending a postpetition financing facility).⁷ Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

IV. The DIP Lenders Should Be Deemed Good-Faith Lenders under Section 364(e).

48. 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) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith,

⁷ Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

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.

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

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

50. The proposed Interim DIP Orders provide that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the Debtors to grant the liens and security interests contemplated by the DIP Loan Documents and proposed Interim DIP Orders. The proposed Interim DIP Order for the DIP Term Facility further provides that, following the occurrence of an Event of Default (as defined in the Term Loan DIP Documents), the automatic stay shall be vacated and modified to the extent necessary to permit the Term DIP Agent and Term DIP Lenders to exercise all rights and remedies in accordance with the Term DIP Loan Documents (other than in the case of certain rights and remedies that are subject to a five (5) calendar day notice period), or applicable law.

51. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors' business judgment, are

reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re Peak Broad.*, LLC, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010) (same); *In re Hights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010) (same).

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

52. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

53. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Orders authorizing the Debtors from and after entry of the Interim DIP Orders until the Final Hearing to use the Cash Collateral and to withdraw and borrow funds under the DIP Facilities. The Debtors require access to these funds prior to the Final Hearing and entry of the Final DIP Orders to be able to continue to operate and pay their administrative expenses. This relief will enable the Debtors to operate their business in a manner that will permit them to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Request for Final Hearing

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

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

55. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

56. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) counsel to the ABL Agent; (d) counsel to the Bridge Agent and Term Agent; (e) counsel to the Term DIP Agent; (f) counsel to the ABL DIP Agent; (g) the Internal Revenue Service; (h) the United States Attorney for the District of Delaware; and (i) the Debtors' cash management banks. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim DIP Orders, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: June 9, 2015
Wilmington, Delaware

/s/ Robert S. Brady

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Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

INTERIM DIP ORDER (TERM DIP FACILITY)

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

In re:

BOOMERANG TUBE, LLC, a Delaware limited liability company, *et al.*,¹

Debtors.

Chapter 11

Case No. 15-11247 (___)

Joint Administration Requested

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364
AND 507: (A) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION TERM
LOAN FINANCING; (B) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS; (C) GRANTING
ADEQUATE PROTECTION; (D) MODIFYING AUTOMATIC STAY;
(E) SCHEDULING A FINAL HEARING; AND (F) GRANTING RELATED RELIEF**

This matter having come before this Court (as defined below) upon the motion, dated June [___], 2015 (the "Motion")², filed by: (i) Boomerang Tube, LLC, a Delaware limited liability company (the "Borrower"); (ii) BTCSP, LLC, a Delaware limited liability company ("BTCSP"); and (iii) BT Financing, Inc., a Delaware corporation ("BT Financing", and, together with BTCSP, the "Guarantors"), each as a debtor and debtor in possession (collectively, the "Debtors") in the above-captioned Chapter 11 cases (collectively with any Successor Cases (as defined herein), the "Cases"), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e) and 507 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 4001-2 of the Local Rules of

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an interim order (this “Interim Order”), *inter alia*:

(i) authorizing the Debtors to obtain senior secured post-petition financing on a superpriority basis pursuant to the terms and conditions of that certain Senior Secured Debtor-In-Possession Credit Agreement attached hereto as Exhibit A (the “Term DIP Loan Agreement”; together with the agreements, documents, instruments and certificates executed by the Debtors or otherwise delivered in connection therewith, the “Term DIP Loan Documents”), by and among the Debtors, Cortland Capital Market Services LLC (“Cortland”), as post-petition administrative agent and collateral agent (in such capacities, the “Term DIP Agent”), and the lenders party thereto from time to time (collectively, the “Term DIP Lenders”), providing for, *inter alia*, a superpriority, new money, term loan credit facility providing for the borrowing of loans in accordance with the Approved Budget (as defined below) in an aggregate principal amount not to exceed \$60,000,000 (the “Term DIP Facility”);

(ii) authorizing the Debtors to execute and deliver the Term DIP Loan Agreement and the other Term DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the Term DIP Loan Documents;

(iii) pursuant to Section 364(c)(2) of the Bankruptcy Code, granting the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, valid, enforceable, non-avoidable, automatically and fully perfected first priority liens on and security interests in all present and after-acquired DIP Collateral (as defined below), wherever located, that is not otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (as defined below) to secure any and all obligations owing under and with respect to the Term DIP Facility and the Term DIP Loan Documents (collectively, and including, without limitation, all “Obligations” as defined in the Term DIP Loan Agreement, the “Term DIP Obligations”), subject only to the Carve-Out (as defined below) and subject only to (x) the Carve-Out, (y) with respect to such assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) below, the ABL Pre-Petition Liens, ABL Permitted Prior Liens, the ABL Senior DIP Liens and the Senior ABL Adequate Protection Liens (each as defined below), and (z) with respect to all such other assets and properties of the Debtors, such liens of the Term DIP Agent ranking *pari passu* with the liens granted to secure the Incremental ABL DIP Amount (as defined and described below) ;

(iv) pursuant to Section 364(c)(3) of the Bankruptcy Code, granting the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, for the purpose of securing the Term DIP Obligations, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (other than ABL Collateral, other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) below and Term Collateral, in each case as to which the liens and security interests in favor of the Term DIP Agent for the purpose of securing the Term DIP Obligations

are described in clause (v) or (vi) below, as applicable), subject only to any such valid, perfected and unavoidable security interest or lien and the Carve-Out, and with such liens of the Term DIP Agent ranking *pari passu* with the liens granted to secure the Incremental ABL DIP Amount;

(v) pursuant to Section 364(c)(3) of the Bankruptcy Code, granting the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, for the purpose of securing the Term DIP Obligations, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all present and after-acquired ABL Collateral and other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) below that are subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, wherever located, subject only to the Carve-Out, the ABL Pre-Petition Liens, ABL Permitted Prior Liens, the ABL Senior DIP Liens and the Senior ABL Adequate Protection Liens;

(vi) pursuant to Section 364(d)(1) of the Bankruptcy Code, granting the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, for the purpose of securing the Term DIP Obligations, valid, enforceable, non-avoidable, automatically and fully perfected first priority senior priming liens on and security interests in all present and after-acquired DIP Collateral securing the Pre-Petition Obligations (other than ABL Collateral and such other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) below), wherever located, subject only to Term Permitted Prior Liens and the Carve-Out;

(vii) pursuant to Section 364(c)(1) of the Bankruptcy Code, granting all of the claims of the Term DIP Agent and the Term DIP Lenders on account of the Term DIP Obligations allowed superpriority administrative expense claim status in each of the Cases with priority over any and all administrative expenses of the kind specified in or arising under any section of the Bankruptcy Code (including, without limitation, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code), subject only to the Carve-Out, and *pari passu* with the liens granted to secure the Incremental ABL DIP Amount;

(viii) providing adequate protection to (x) the Term Agent (as defined below) and the other Term Secured Parties (as defined below) for any Diminution in Value (as defined below) of their interests in the Term Collateral, and (y) the ABL Agent (as defined below) and the other ABL Secured Parties (as defined below) for any Diminution in Value of their interests in the ABL Collateral;

(ix) authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the Term DIP Loan Documents as such amounts become due and payable, including, without limitation, commitment fees, administrative agent fees and the fees and disbursements of the respective attorneys, advisors, accountants and other consultants engaged by the Term DIP Agent and the Term DIP Lenders, all to the extent provided in, and in accordance with the terms of, this Interim Order, the Term DIP Loan Agreement and the other Term DIP Loan Documents;

(x) modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Term DIP Loan Documents and this Interim Order; and

(xi) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing;

and this Court having considered the Motion, the Declaration of Kevin Nystrom in Support of Debtors’ Chapter 11 Petitions and First Day Motions, the exhibits attached thereto, the Term DIP Loan Documents, and the record established at the interim hearing held on June [____], 2015 to consider the interim relief requested in the Motion (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), and 9014 and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by this Court; and it appearing to this Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors, and is essential for the continued operation of the Debtors’ businesses; and it further appearing that the Debtors are unable to obtain unsecured credit for money borrowed allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code; and adequate protection being provided on account of the interests of certain holders of liens on the property of the Debtors’ estates on which liens are to be granted; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. Petition Date. On the date of the Motion (the "Petition Date"), each of the Debtors filed a separate, voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this "Court") commencing these Cases.

B. Debtors-in-Possession. The Debtors continue to manage and operate their businesses and properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and the Debtors confirmed their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. The statutory predicates for the relief set forth herein are Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Rules 2002, 4001 and 9014 of the Bankruptcy Rules and the Local Rules. Venue for these Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

³ Where appropriate in this Interim Order, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rule 7052.

D. Committee Formation. As of the date hereof, the United States Trustee (the "U.S. Trustee") has not yet appointed an official committee of unsecured creditors in these Cases (the "Committee").

E. Debtors' Stipulations. Subject to paragraph 40 hereof, the Debtors admit, stipulate, acknowledge, and agree that:

(i) Prior to the Petition Date: (a) the Borrower, Cortland, as administrative agent and collateral agent (as successor to Bank of America, N.A. in such capacities, the "Term Agent"), and the lenders from time to time party thereto (collectively, the "Term Lenders"; together with the Term Agent, collectively, the "Term Secured Parties") entered into that certain Credit Agreement, dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "Term Loan Agreement"); (b) the Borrower, Cortland, as administrative agent and collateral agent (the "Bridge Agent"), and the lenders from time to time party thereto (collectively, the "Bridge Lenders"; together with the Bridge Agent, collectively, the "Bridge Secured Parties") entered into that certain Credit Agreement, dated as of April 6, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "Bridge Loan Agreement"); and (c) the Borrower, Wells Fargo Capital Finance, LLC, as administrative agent (in such capacity, the "ABL Agent"; together with the Term Agent and the Bridge Agent, collectively, the "Pre-Petition Agents"), and the lenders from time to time party thereto (collectively, the "ABL Lenders"; together with the ABL Agent, the "ABL Secured Parties"; the Term Secured Parties, the Bridge Secured Parties and the ABL Secured Parties are collectively referred to herein as the "Pre-Petition Secured Parties"), entered into that certain Amended and Restated Credit Agreement, dated as of October 11, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the "ABL Loan Agreement"; together with the Term Loan Agreement and the Bridge Loan Agreement, the "Pre-Petition Agreements").

(ii) Each of the Guarantors is: (a) a guarantor of the Term Obligations (as defined below) pursuant to the terms of that certain Guarantee and Collateral Agreement, dated as of October 11, 2012 (the "Term Guarantee and Collateral Agreement"); (b) a guarantor of the Bridge Obligations (as defined below) pursuant to the terms of that certain Guarantee and Collateral Agreement, dated as of April 6, 2015 (the "Bridge Guarantee and Collateral Agreement"); and (c) a guarantor of the ABL Obligations (as defined below) pursuant to the terms of that certain Guaranty, dated as of December 10, 2010 (the "ABL Guaranty Agreement").

(iii) Each of: (a) the Term Loan Agreement, the Term Guarantee and Collateral Agreement, and the other Loan Documents (as defined in the Term Loan Agreement) (collectively, the "Term Loan Documents"); (b) the Bridge Loan Agreement, the Bridge Guarantee and Collateral Agreement, and the other agreements, documents, instruments and certificates executed by the Debtors or otherwise delivered in connection with the Bridge Loan Agreement (collectively, the "Bridge Loan Documents"); and (c) the ABL Loan Agreement, the

ABL Guaranty and the other Loan Documents (as defined in the ABL Loan Agreement) (collectively, the “ABL Loan Documents”; together with the Term Loan Documents and the Bridge Loan Documents, the “Pre-Petition Loan Documents”), are valid and enforceable in accordance with their terms against each of the Debtors, are not subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever, and are not subject to avoidance, subordination, recovery, disallowance, recharacterization or other challenge pursuant to applicable state or federal law (including, without limitation, the Bankruptcy Code).

(iv) Pursuant to the Term Loan Documents, the Term Secured Parties agreed to provide the Borrower with term loans in an aggregate principal amount of \$230,000,000. As of the Petition Date, the outstanding principal amount owed by the Debtors with respect to the term loans made under the Term Loan Agreement was not less than \$204,125,000 (collectively, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Term Loan Documents, including, without limitation, accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, financial advisors’ fees, related expenses and disbursements), indemnification obligations, any other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower’s or any other Loan Party’s (as defined in the Term Loan Agreement) obligations pursuant to the Term Loan Documents, the “Term Obligations”).

(v) Pursuant to the Bridge Loan Documents, the Bridge Secured Parties agreed to provide the Borrower with term loans in an aggregate principal amount of \$6,200,000. As of the Petition Date, the outstanding principal amount owed by the Debtors with respect to the term loans made under the Bridge Loan Agreement was not less than \$6,200,000 (collectively, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Bridge Loan Documents, including, without limitation, accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, financial advisors’ fees, related expenses and disbursements), indemnification obligations, any other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower’s or any other Loan Party’s (as defined in the Bridge Loan Agreement) obligations pursuant to the Bridge Loan Documents, the “Bridge Obligations”).

(vi) Pursuant to the ABL Loan Documents, the ABL Secured Parties agreed to provide the Borrower with revolving loans in an aggregate principal amount not to exceed the lesser of (x) \$85,000,000, and (y) the Borrowing Base (as defined in the ABL Loan Agreement). As of the Petition Date, the outstanding principal amount owed by the Debtors under the ABL Loan Agreement was not less than \$33,500,000, which amount includes an “Overadvance” (as defined in the ABL Loan Documents, the “Permitted Overadvance”) of \$5,500,000 (collectively, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the ABL Loan Documents, including, without limitation, accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, financial advisors’ fees, related expenses and disbursements), indemnification obligations, any other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower’s or any

other Loan Party's (as defined in the ABL Loan Agreement) obligations pursuant to the ABL Loan Documents, the "ABL Obligations"; together with the Term Obligations and the Bridge Obligations, the "Pre-Petition Obligations").

(vii) The Pre-Petition Obligations are legal, binding and enforceable obligations of the Debtors and are not subject to any offset, defense, claim, counterclaim or any other diminution of any type, kind or nature whatsoever. No portion of the Pre-Petition Obligations, or any funds previously paid to the Pre-Petition Secured Parties is subject to avoidance, subordination, recovery, disallowance, recharacterization or other challenge pursuant to the Bankruptcy Code (including, but not limited to, Section 502(d) of the Bankruptcy Code) or applicable non-bankruptcy law.

(viii) To secure the Pre-Petition Obligations, the Debtors granted to each of the Pre-Petition Agents, for the benefit of the Pre-Petition Secured Parties, respectively, security interests in and liens on (collectively, the "Pre-Petition Liens"), (x) with respect to the Term Loan Agreement and the Bridge Loan Agreement, all assets and properties of the Debtors that constitute Term Loan Collateral (as defined in the Pre-Petition Intercreditor Agreement (as defined below)), including, without limitation, all capital stock, intellectual property, equipment, owned real property, fixtures, investment property, commercial tort claims, the TL Deposit Account (as defined in the Term Loan Agreement and the Bridge Loan Agreement) and all cash on deposit therein, chattel paper, documents, instruments, letter of credit rights, general intangibles, supporting obligations and other contract rights, books and records relating to the foregoing and all proceeds (including insurance proceeds) and products of the foregoing (collectively, and as defined as Term Loan Collateral in the Pre-Petition Intercreditor Agreement, the "Term Collateral"), and (y) with respect to the ABL Loan Agreement, all assets and properties of the Debtors that constitute Working Capital Collateral (as defined in the Pre-Petition Intercreditor Agreement), including, without limitation, all accounts and payment intangibles, inventory, chattel paper, instruments and documents relating to the foregoing, deposit accounts (other than the TL Deposit Account), cash and cash equivalents (except to the extent such items constitute the proceeds of Term Collateral), customer contracts, tax refunds, books and records relating to the foregoing and all proceeds (including insurance proceeds) and products of the foregoing (collectively, and as defined as Working Capital Collateral in the Pre-Petition Intercreditor Agreement, the "ABL Collateral"; the Term Collateral and the ABL Collateral are referred to herein as the "Pre-Petition Collateral").

(ix) Each of the Term Agent and the Bridge Agent filed: (a) UCC-1 Financing Statements regarding the Pre-Petition Collateral against the Debtors in the applicable state and/or county filing offices, the effectiveness of each of which, as applicable, was continued by the filing of a UCC-3 Financing Statement Amendment; (b) deeds of trust with respect to the Pre-Petition Collateral consisting of owned real property in the applicable filing office; and (c) notices of security interest regarding the Pre-Petition Collateral consisting of intellectual property in the applicable filing offices. In addition, the ABL Agent filed UCC-1 Financing Statements regarding the Pre-Petition Collateral against the Debtors in the applicable state and/or

county filing office, the effectiveness of each of which, as applicable, was continued by the filing of a UCC-3 Financing Statement Amendment.⁴

(x) The relative claims and interests of the Term Agent, the Bridge Agent and the ABL Agent on and in the Pre-Petition Collateral, are governed by the terms of that certain Amended and Restated Intercreditor Agreement, dated as of April 6, 2015 (the “Pre-Petition Intercreditor Agreement”), by and among the Borrower, the Guarantors, the Term Agent, the Bridge Agent and the ABL Agent.

(xi) Subject to the Carve-Out and the provisions of paragraph 38 hereof: (a) the liens and security interests granted to the Term Agent and the Bridge Agent in the Term Collateral (collectively, the “Term Pre-Petition Liens”) are senior in priority to all other liens on or security interests in the Term Collateral, subject only to certain liens otherwise permitted by the Term Loan Agreement and the Bridge Loan Agreement (to the extent any such permitted liens were existing, valid, enforceable, properly perfected, non-avoidable, not subject to subordination, recharacterization or other challenge and senior in priority to the Term Pre-Petition Liens as of the Petition Date, the “Term Permitted Prior Liens”), including, without limitation, any and all liens on the Term Collateral securing the ABL Obligations; (b) the liens and security interests granted to the ABL Agent in the ABL Collateral (collectively, the “ABL Pre-Petition Liens”; together with the Term Pre-Petition Liens, the “Pre-Petition Liens”) are senior in priority to all other liens on or security interests in the ABL Collateral except for certain liens otherwise permitted by the ABL Loan Agreement (to the extent any such permitted liens were existing, valid, enforceable, properly perfected, non-avoidable, not subject to subordination, recharacterization or other challenge and senior in priority to the ABL Pre-Petition Liens as of the Petition Date, the “ABL Permitted Prior Liens”; together with the Term Permitted Prior Liens, collectively, the “Permitted Prior Liens”); (c) the Pre-Petition Liens held by the Pre-Petition Agents are valid, binding, enforceable, non-avoidable and perfected; (d) the Pre-Petition Obligations constitute legal, valid, binding and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the Pre-Petition Loan Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code); (e) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Pre-Petition Liens or the Pre-Petition Obligations exist, and no portion of the Pre-Petition Liens or the Pre-Petition Obligations is subject to any challenge or defense, including, without limitation, avoidance, disgorgement, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (f) the Debtors and their estates have no offsets, defenses, claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against the Pre-Petition Secured Parties and/or any of their respective affiliates, parents, subsidiaries, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees; and (g) the Debtors have waived, discharged and released any right they may have to challenge any of the Pre-Petition Obligations, the priority of the Pre-Petition Obligations and the security for (and the priority of the liens securing) the Pre-Petition Obligations, and to assert any offsets,

⁴ Copies of each of these UCC-1 Financing Statements, UCC-3 Financing Statement Amendments, deeds of trust and notices of security interest will be provided to this Court, if necessary, upon request.

defenses, claims, objections, subordination, challenges, causes of action and/or choses of action against the Pre-Petition Secured Parties and/or any of their respective affiliates, parents, subsidiaries, controlling persons, agents, attorneys, advisors, professionals, officers, directors or employees relating thereto.

(xii) The Debtors represent that all of the Debtors' cash as of the entry of this Interim Order, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Pre-Petition Collateral, constitute the Pre-Petition Collateral of the applicable Pre-Petition Secured Parties.

(xiii) The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Pre-Petition Loan Documents.

F. Findings Regarding the Post-Petition Financing.

(i) Request for Post-Petition Financing. The Debtors seek authority to: (a) enter into the Term DIP Facility on the terms described herein and in the Term DIP Loan Documents; and (b) use the proceeds of the Term DIP Facility (together with a debtor-in-possession credit facility to be provided by one or more of the ABL Secured Parties (the "ABL DIP Lenders") in an aggregate amount not to exceed \$85,000,000 (the "ABL DIP Facility")) on the terms described herein. At the Final Hearing, the Debtors will seek final approval of the Term DIP Loan Documents and the proposed post-petition financing arrangements contained therein pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to the Term DIP Agent and the Term DIP Lenders in all respects, and notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order. Good cause has been shown for the entry of this Interim Order.

(ii) Priming of Term Pre-Petition Liens. The priming of the liens granted to the Term Agent, as contemplated by this Interim Order and the Term DIP Facility and as further described below, will enable the Debtors to obtain the Term DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors; however, the Term Agent is entitled to receive adequate protection as set forth in this Interim Order pursuant to Sections 361,

363 and 364 of the Bankruptcy Code, for and to the extent of any diminution in the value of its interests in the Term Collateral resulting from, among other things, the Debtors' use, sale or lease of such collateral, market value decline of such collateral, the imposition of the automatic stay, the subordination to the Carve-Out and the priming (to the extent provided for herein) of the Term Pre-Petition Liens (collectively, and (i) with respect to the Term Agent, solely to the extent of any such diminution in value of its interests in the Term Collateral or (ii) with respect to any other Pre-Petition Secured Party, solely to the extent of any such diminution in value of its interests in the applicable collateral, the "Diminution in Value").

(iii) *Need for Post-Petition Financing.* The Debtors' obtaining credit on an interim basis pursuant to the Term DIP Facility as provided for herein is necessary to avoid immediate and irreparable harm to the Debtors, their estates, their creditors and other parties-in-interest, and to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers and customers, to pay their employees and otherwise to finance their operations through the Chapter 11 process requires the availability of working capital from the Term DIP Facility. Without the ability to access the Interim Financing (as defined below) and the Term DIP Facility, the Debtors, their estates and their creditors would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital or financing to operate their businesses or maintain their properties in the ordinary course of business without the Term DIP Facility.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the Term DIP Lenders on terms more favorable than

provided for in the Term DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also have been unable to obtain sufficient credit (a) having priority over that of administrative expenses of the kind specified in Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a post-petition basis is not otherwise available without granting the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in this Interim Order.

(v) *Use of Proceeds of the Term DIP Facility.* As a condition to entering into the Term DIP Loan Agreement, the extension of credit under the Term DIP Facility and the authorization to use the proceeds of the Term DIP Facility, the Term DIP Agent and the Term DIP Lenders require, and the Debtors have agreed, that the proceeds of the Term DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of the Term DIP Loan Documents and in accordance with an Approved Budget, solely for (a) working capital and other general corporate purposes of the Debtors, (b) payment of the costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred (I) in connection with the Term DIP Facility, and (II) by the Term Agent or Bridge Agent in connection with the Cases, in each case, to the extent such costs, fees and expenses are reimbursable pursuant to the terms of the Term Loan Documents or Bridge Loan Documents, as applicable, (c) repayment in full in cash of all Bridge Obligations, and (d) to the extent that the Permitted Overadvance under the

ABL Loan Agreement exceeds \$5,000,000, repayment of such excess such that the Permitted Overadvance after giving effect to such repayment shall not exceed \$5,000,000 (any such payment, the “Overadvance Payment”).

G. Adequate Protection.

(i) The Term Secured Parties are entitled to receive adequate protection to the extent of any Diminution in Value of their interests in the Term Collateral. Pursuant to Sections 361, 363 and 507(b) of the Bankruptcy Code and subject to the terms of this Interim Order, as adequate protection, the Term Agent, for the benefit of itself and the other Term Secured Parties, will receive the adequate protection liens and claims, and the professional and other expense reimbursements, as more fully set forth in paragraph 14 herein.

(ii) The ABL Secured Parties are entitled to receive adequate protection to the extent of any Diminution in Value of their interests in the ABL Collateral. Pursuant to Sections 361, 363 and 507(b) of the Bankruptcy Code and subject to the terms of this Interim Order, as adequate protection, the ABL Agent, for the benefit of itself and the other ABL Secured Parties, will receive the adequate protection liens and claims, and the professional and other expense reimbursements, as more fully set forth in paragraph 14 herein and the order entered concurrently herewith approving the ABL DIP Facility.

H. New Loan. The Term DIP Facility (including the Interim Financing) constitutes new loans and financial accommodations from the Term DIP Lenders to the Debtors, separate and distinct from the loans and financial accommodations provided prior to the Petition Date under the Pre-Petition Loan Documents, and the proceeds of the Term DIP Facility may only be

borrowed and such proceeds may only be used in compliance with an Approved Budget, the Term DIP Loan Agreement and this Interim Order.

I. Sections 506(c) and 552(b). In exchange for (i) the Term DIP Agent's and the Term DIP Lenders' agreement to subordinate their liens and superpriority claims to the Carve-Out, and (ii) the Term Secured Parties' agreement to subordinate their Term Pre-Petition Liens to the DIP Liens and the Carve-Out, upon entry of a Final Order providing for such relief, each of the Term Secured Parties, the Term DIP Agent and the Term DIP Lenders shall receive: (a) a waiver of any "equities of the case" claims under Section 552(b) of the Bankruptcy Code; and (b) a waiver of the provisions of Section 506(c) of the Bankruptcy Code.

J. Good Faith of the Term DIP Agent and the Term DIP Lenders; Debtors' Business Judgment.

(i) Willingness to Provide Financing. The Term DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of this Interim Order and the Final Order; (b) approval by this Court of the terms and conditions of the Term DIP Facility and the Term DIP Loan Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that the Term DIP Agent and the Term DIP Lenders are extending post-petition credit to the Debtors pursuant to the Term DIP Loan Documents and this Interim Order in good faith, and that the Term DIP Agent's and the Term DIP Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the Term DIP Loan Documents will have the protections provided in Section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Interim Order or any other order for amounts loaned or advanced pursuant to this Interim Order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extension of credit under the Term DIP Facility, governed by the terms and conditions of the Term DIP Loan Documents, the fees paid and to be paid thereunder, and this Interim Order as it relates to the Interim Financing: (a) are fair and reasonable; (b) are the best available to the Debtors under the circumstances; (c) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; and (d) are supported by reasonably equivalent value and fair consideration. The Term DIP Facility was negotiated in good faith and at arms' length among the Debtors, the Term DIP Agent and the Term DIP Lenders. The credit to be extended under the Term DIP Facility shall be deemed to have been allowed, advanced, made, used and/or extended in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and the Term DIP Agent and the Term DIP Lenders are therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order.

K. *Notice*. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (iv) counsel to the Term DIP Agent for itself and for the Term DIP Lenders; (v) counsel to the Term Agent for itself and for the other Term Secured Parties; (vi) counsel to the ABL Agent for itself and for the other ABL Secured Parties; (vii) counsel to the agent under the proposed ABL DIP Facility (the "ABL DIP Agent"; together with the ABL DIP Lenders, collectively, the "ABL DIP Secured Parties"); (viii) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (ix) all financial institutions at which the Debtors

maintain deposit accounts; (x) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; and (xi) all other parties required to receive notice pursuant to Bankruptcy Rules 2002, 4001 or 9014 and applicable Local Rules or requesting to receive notice prior to the date hereof. The Debtors have made reasonable efforts to afford appropriate notice under the circumstances, and such notice of the Motion and the Interim Hearing is good and sufficient to permit the interim relief set forth in this Interim Order.

L. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent entry of this Interim Order, the Debtors' businesses, properties and estates will be immediately and irreparably harmed. This Court concludes that sufficient cause exists therefor and that entry of this Interim Order is in the best interest of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses.

Based upon the foregoing findings and conclusions, the Motion and the record made before this Court with respect to the Motion at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Interim Financing Approved. The Motion is granted to the extent provided herein, and the Interim Financing is authorized and approved, subject to the terms and conditions set forth in this Interim Order and the Term DIP Loan Documents.

2. Objections Overruled. All objections to the interim relief sought in the Motion to the extent not previously withdrawn, overruled or resolved are hereby overruled on the merits and denied with prejudice.

Term DIP Facility Authorization

3. Authorization of the Term DIP Facility. The Term DIP Facility and the Interim Financing are hereby approved by this Interim Order. The Debtors are expressly and immediately authorized and empowered to execute and deliver the Term DIP Loan Documents, and to incur and to perform the Term DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the Term DIP Loan Documents, and to deliver any and all instruments and documents that may be required or necessary for the performance by the Debtors under the Term DIP Facility and the creation and perfection of the DIP Liens. The Debtors are hereby authorized, empowered and directed to pay, in accordance with this Interim Order, the principal, interest, fees, expenses, legal fees and other amounts described in the Term DIP Loan Documents, as such become due and payable and without the need to obtain further approval of this Court, including, without limitation, commitment fees, administrative agent fees and the fees and disbursements that are chargeable and reimbursable under the Term DIP Loan Agreement. Each officer of the Debtors is hereby authorized to execute and deliver each of the Term DIP Loan Documents, such execution and delivery to be conclusive of such officer's authority to act in the name of and on behalf of the Debtors. Upon execution and delivery, the Term DIP Loan Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

4. Authorization to Borrow. Prior to the entry of the Final Order, and to prevent immediate and irreparable harm to the Debtors' estates, the Debtors are hereby authorized to borrow an aggregate principal amount of \$35,000,000 (the "Interim Financing"), subject to the terms and conditions set forth in the Term DIP Loan Documents and this Interim Order.

5. Term DIP Obligations. Upon its entry, this Interim Order shall constitute and evidence the validity and binding effect of the Term DIP Obligations, which Term DIP

Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in any of the Cases, or any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). Upon entry of this Interim Order, the Term DIP Obligations will include all post-petition loans and any other post-petition indebtedness or obligations, contingent or absolute, that may now or from time-to-time be owing by any of the Debtors to the Term DIP Lenders under this Interim Order and the Term DIP Loan Documents, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts due under the Term DIP Facility as set forth herein. The Term DIP Obligations shall be due and payable as provided for herein and in the Term DIP Loan Documents.

6. DIP Liens. To secure the Term DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to Sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the Term DIP Agent, for the benefit of itself and the Term DIP Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition (x) priming, first-priority security interests in and liens on all Term Collateral, subject only to the Carve-Out and Term Permitted Prior Liens, (y) junior security interests in and liens on all ABL Collateral and other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) above, subject only to the Carve-Out, ABL Permitted Prior Liens, the ABL Pre-Petition Liens, the liens securing the ABL DIP Facility (the “ABL Senior DIP Liens”) and the Senior ABL Adequate Protection Liens, and (z) security interests in and liens on all assets or property of the Debtors other than Term Collateral, ABL Collateral and other assets and properties of the Debtors of a type described in paragraph

(E)(viii)(y) above, having the priorities set forth in clauses (i) and (ii) of paragraph 7(a) below (the liens securing the Term DIP Obligations described in clauses (x), (y) and (z), collectively, the “DIP Liens”), in each case, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Debtors (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, the Debtors, and regardless of where located, including, without limitation: (a) all Pre-Petition Collateral; (b) cash and cash equivalents; (c) all funds in any account of the Debtors; (d) all accounts and other receivables; (e) contract rights; (f) instruments, documents and chattel paper; (g) securities (whether or not marketable); (h) equipment, inventory and fixtures; (i) real property interests; (j) interests in leaseholds, (k) franchise rights; (l) patents, tradenames, trademarks, copyrights and all other intellectual property; (m) general intangibles; (n) capital stock; (o) investment property; (p) supporting obligations; (q) letter of credit rights; (r) except for avoidance actions under Chapter 5 of the Bankruptcy Code (other than Section 549 thereof), all commercial tort claims and all other claims and causes of action; (s) the proceeds of all claims or causes of action (including the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code) except to the extent expressly set forth herein; (t) upon entry of a Final Order providing for such relief, all avoidance actions and proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code; (u) upon entry of a Final Order providing for such relief, the Debtors’ rights under Section 506(c) of the Bankruptcy Code; and (v) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with

respect to any of the foregoing (all of which being hereinafter collectively referred to as the “DIP Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Term DIP Obligations. The Term Pre-Petition Liens shall continue, shall (to the extent that any of the Term Pre-Petition Obligations are refinanced) inure to the benefit of the Term DIP Agent and the Term DIP Lenders, shall secure the Term DIP Obligations, and shall be included in the definition of “DIP Liens.” Notwithstanding anything contained herein to the contrary, upon entry of a Final Order providing for such relief, any provision of any lease or other license, contract or other agreement that requires (x) the consent or approval of one or more landlords or other parties or (y) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest or other license, contract or other agreement, or the proceeds thereof, or other post-petition collateral related thereto, will be deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens in such leasehold interest or other license, contract or other agreement, or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the Term DIP Lenders or the Pre-Petition Secured Parties in accordance with the terms of the Term DIP Loan Documents or this Interim Order. Upon entry of the Final Order, all landlord agreements or bailee waivers to which any of the Pre-Petition Agents are a party shall be deemed amended to include the Term DIP Agent as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the Term DIP Agent against, and binding upon, each landlord or bailee party thereto in accordance with, and subject to, its respective terms and conditions until the Term DIP

Obligations have been paid in full in cash and the Term DIP Loan Agreement shall have been terminated.

7. DIP Lien Priority.

(a) The Term DIP Agent, for the benefit of itself and the Term DIP Lenders, and for the purpose of securing the Term DIP Obligations, shall have the following DIP Liens with the following lien priorities:

(i) Pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected first priority liens on and security interests in all present and after-acquired DIP Collateral, wherever located, that is not otherwise subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, subject only to (x) the Carve-Out and (y) with respect to such assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) above, the ABL Pre-Petition Liens, ABL Permitted Prior Liens, the ABL Senior DIP Liens and the Senior ABL Adequate Protections Liens; provided, however, that, with respect to all such other assets and properties of the Debtors which are not of a type described in paragraph (E)(viii)(y) above, solely with respect to the amount by which the amount outstanding at any time under the ABL DIP Facility, when combined with the amount owed under the ABL Loan Agreement, exceeds (in the aggregate) the amount of the ABL Obligations as of the commencement of the Cases (such excess, the “Incremental ABL DIP Amount”), the foregoing lien in favor of the Term DIP Agent shall rank *pari passu* with the lien granted to the ABL DIP Secured Parties under Section 364(c)(2) of the Bankruptcy Code pursuant to the interim and final orders approving the ABL DIP Facility (the “ABL DIP Orders”);

(ii) Pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all DIP Collateral, wherever located, that is subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date (other than ABL Collateral, other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) above and Term Collateral, in each case as to which the DIP Liens in favor of the Term DIP Agent for the purpose of securing the Term DIP Obligations are described in clause (iii) or (iv) below, as applicable), subject only to any such valid, perfected and unavoidable security interest or lien and the Carve-Out, and with such liens of the Term DIP Agent ranking *pari passu* with the liens granted to secure the Incremental ABL DIP Amount;

(iii) Pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected junior liens on and security interests in all DIP Collateral constituting ABL Collateral or other assets and properties of the Debtors of a type described in paragraph (E)(viii)(y) above that are subject to a valid, perfected and unavoidable security interest or lien as of the Petition Date, wherever located, subject only to ABL Permitted Prior Liens, ABL Senior DIP Liens, ABL Pre-Petition Liens, the ABL Adequate Protection Liens and the Carve-Out; and

(iv) Pursuant to Section 364(d)(1) of the Bankruptcy Code, valid, enforceable, non-avoidable, automatically and fully perfected first priority senior priming liens on and security interests in all DIP Collateral securing the Pre-Petition Obligations (other than ABL Collateral and such other assets and properties of the Debtors of a type

described in paragraph (E)(viii)(y) above), wherever located, subject only to Term Permitted Prior Liens.

(b) Except as expressly set forth herein, absent further order of the Court, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases, and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, and/or upon the dismissal of any of the Cases or any Successor Cases, subject only to the Carve-Out. The DIP Liens shall not be subject to (i) Sections 510, 549 or 550 of the Bankruptcy Code, or (ii) upon entry of a Final Order providing for such relief, Sections 506(c) or 551 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to Section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. Protection of Term DIP Lenders' Rights. So long as there are any Term DIP Obligations outstanding, the Term Agent and the other Term Secured Parties shall: (a) have no right to, and take no action to, foreclose upon or recover in connection with the liens granted thereto pursuant to the Term Loan Documents, this Interim Order or otherwise or seek or exercise any enforcement rights or remedies against any DIP Collateral or in connection with the debt and obligations underlying the Term Loan Documents or the Term Adequate Protection Liens (as defined below), including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Term Loan Agreement); (b) be deemed to have consented to any release of DIP Collateral authorized under the Term DIP Loan Documents; (c) not file any further financing statements, trademark filings, copyright filings, mortgages, memoranda of lease, notices of lien or similar instruments, or otherwise take any

action to perfect their security interests in the DIP Collateral unless, solely as to this clause (c), the Term DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to the Term DIP Loan Documents and/or this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the date of filing; and (d) deliver or cause to be delivered, at the Debtors' cost and expense (for which the Term Secured Parties shall be reimbursed for reasonable costs and expenses upon submission to the Debtors of invoices or billing statements), any termination statements, releases and/or assignments (to the extent provided for herein) in favor of the Term DIP Agent and the Term DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of the Term Adequate Protection Liens on any portion of the DIP Collateral subject to any sale or disposition approved or arranged for by the Term DIP Agent.

9. Superpriority Term DIP Claim. Subject to the Carve-Out, upon entry of this Interim Order, the Term DIP Agent and the Term DIP Lenders are hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim (the "Superpriority Term DIP Claim"), in each of the Cases, for all of the Term DIP Obligations: (a) with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, (i) administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code, (ii) any claims allowed pursuant to the Pre-Petition Term Obligations, and (iii) the Term Superpriority Claims; provided, however, that, solely with

respect to the Incremental ABL DIP Amount, the Superpriority Term DIP Claim will rank *pari passu* with the superpriority administrative expense claim under Section 364(c)(1) of the Bankruptcy Code granted to the ABL DIP Secured Parties pursuant to the ABL DIP Orders (the “Superpriority ABL DIP Claim”); and (b) which shall at all times be senior to the rights of the Debtors and their estates (other than the Carve-Out), and any successor trustee or other estate representative to the extent permitted by law.

10. Extension of Credit. The Term DIP Agent and the Term DIP Lenders shall have no obligation to make any loan or advance under the Term DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under this Interim Order and the Term DIP Loan Documents have been satisfied in full or waived in accordance with the Term DIP Loan Documents.

11. Use of Term DIP Facility Proceeds.

(a) The proceeds of the Term DIP Facility will be used only for the following purposes, in each case in accordance with and subject to an Approved Budget and except as otherwise agreed by the Term DIP Agent and the Required Term DIP Lenders (as defined below): (i) working capital and other general corporate purposes of the Debtors, (ii) payment of the costs of administration of the Cases, including, without limitation, the costs, fees and expenses incurred (A) in connection with the Term DIP Facility, and (B) by the Term Agent or Bridge Agent in connection with the Cases, in each case, to the extent such costs, fees and expenses are reimbursable pursuant to the terms of the Term Loan Documents or Bridge Loan Documents, as applicable, (iii) repayment in full in cash of all Bridge Obligations, and (iv) the making of the Overadvance Payment (as necessary).

(b) Without in any way limiting the foregoing, no DIP Collateral, proceeds of the DIP Loans, any portion of the Carve-Out or any other amounts may be used directly or indirectly, without the prior written consent of the Term DIP Agent and the Term DIP Lenders, by any of the Debtors, the Committee, if any, any other committee, or any trustee or other estate representative appointed in the Cases or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (i) to seek authorization to obtain liens or security interests that are senior to, or on a parity with, the DIP Liens or the Superpriority Term DIP Claim (except to the extent expressly set forth herein), the Term Adequate Protection Liens or Term Superpriority Claims, or the Term Pre-Petition Liens; (ii) unless the Term DIP Agent and the Required Term DIP Lenders have consented to the incurrence of such fees in writing, to pay fees and expenses to Lazard Frères & Co., LLC, or any replacement thereof (the "Investment Banker"), in an amount in excess of \$500,000 plus any expense reimbursement owed to the Investment Banker (in each case pursuant to that certain letter of engagement dated as of May 4, 2015, by and between the Borrower and the Investment Banker (the "Lazard Engagement Letter")) less any amounts paid to the Investment Banker prior to the Petition Date pursuant to the Lazard Engagement Letter; or (iii) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Term DIP Agent, the Term DIP Lenders, the Term Agent or the other Term Secured Parties, any of their controlling persons, affiliates or successors or assigns, and each of the respective officers, directors, employees, agents, attorneys, or advisors of each of the foregoing (collectively, the

“Released Parties”), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (A) any claims or causes of action arising under Chapter 5 of the Bankruptcy Code, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Term DIP Obligations, the Term Superpriority Claims, the Term DIP Liens, the Term DIP Loan Documents, the Term Loan Documents or the Term Obligations, (D) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Term DIP Obligations or the Term Obligations, (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (1) the Term DIP Agent or the Term DIP Lenders hereunder or under any of the Term DIP Loan Documents, or (2) the Term Agent or the other Term Secured Parties under any of the Term Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Term DIP Agent’s, the Term DIP Lenders’ or the other Term Secured Parties’ assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Term DIP Loan Documents, Term Loan Documents and the Interim and/or Final Orders), or (F) objecting to, contesting, or interfering with, in any way, the Term DIP Agent’s, the Term DIP Lenders’ and the Term Secured Parties’ enforcement or realization upon any of the DIP Collateral once an Event of Default (as defined in the Term DIP Loan Agreement) has occurred; provided, however, that no more than \$25,000 in the aggregate of the DIP Collateral, the Carve-Out and proceeds from the borrowings under the Term DIP Facility may be used by any Committee to investigate claims against the Term DIP Lenders and/or liens granted to the Term Agent under the Term Loan Agreement.

12. Termination Events. The occurrence of any of the following events (the “Termination Events”) shall constitute an Event of Default under the DIP Credit Agreement and a termination event under this Interim Order:

(a) for a period in excess of three (3) calendar days, reversal, vacatur or stay of the effectiveness of this Interim Order or the Final Order without the express prior written consent of the Term DIP Agent (acting at the direction of Term DIP Lenders holding more than fifty percent (50%) of the outstanding loans and commitments under the Term DIP Facility (collectively “Required Term DIP Lenders”));

(b) without the written consent of the Term DIP Agent acting at the direction of the Required Term DIP Lenders, (i) dismissal of any of the Cases or conversion of any of the Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner or other responsible officer with enlarged powers relating to the operation of the business of the Borrower or any Guarantor in any of the Cases, which dismissal, conversion or appointment shall not have been reversed, stayed or vacated within three (3) calendar days, (ii) termination of the exclusive period for the Debtors to file a plan of reorganization in the Cases or the filing of a plan of reorganization in the Cases other than the Chapter 11 Plan (as defined below), or (iii) the Debtors shall seek or request the entry of any order to effect any of the events described in subclause (i) of this clause (b);

(c) the occurrence of any Event of Default (as defined in the Term DIP Loan Agreement), or the occurrence of any Default following the passage of any applicable notice or cure period set forth in the Term DIP Loan Agreement regardless of any acts or omissions of the Term DIP Agent and the Term DIP Lenders that would otherwise have resulted in such Default not becoming an Event of Default by virtue of such passage of any applicable notice or cure period;

(d) the entry by this Court of an order granting relief from the automatic stay imposed by Section 362 of the Bankruptcy Code sought by any party that materially adversely affects the Debtors’ property, without the written consent of the Term DIP Agent (acting at the direction of the Required Term DIP Lenders);

(e) three (3) business days after written notice to the Debtors of the failure by the Debtors to deliver to the Term DIP Agent any of the documents or other information required to be delivered pursuant to the Orders when due (during which time the Debtors may cure) or any such documents or other information shall contain a misrepresentation of a material fact when made;

(f) except as set forth herein, three (3) business days after the failure by the Debtors to observe or perform any of the material terms or provisions contained in the Orders;

(g) the entry of an order of this Court granting any lien on or security interest in any of the DIP Collateral that is pari passu with or senior to the DIP Liens held by the Term DIP Agent on or as security interests in the DIP Collateral, the Term Adequate Protection Liens,

the Term Superpriority Claims or the Term Pre-Petition Liens, or the Debtors shall seek or request the entry of any such order, except for the ABL Senior DIP Liens or the ABL Adequate Protection Liens;

(h) the Debtors' creating or permitting to exist any other superpriority claim which is pari passu with or senior to the claims of the Term DIP Agent and the Term DIP Lenders, the Term Adequate Protection Liens, the Term Superpriority Claims or the Term Pre-Petition Liens, except for the Carve-Out, the ABL Senior DIP Liens or the ABL Adequate Protection Liens;

(i) the Debtors filing a pleading, or in any way support another party's pleading, seeking to modify or otherwise alter any of the terms and conditions set forth in the Orders without the prior written consent of the Term DIP Agent (acting at the direction of Required Term DIP Lenders);

(j) the entry of an order of this Court amending, supplementing or otherwise altering any of the terms and conditions set forth in the Orders without the prior written consent of the Term DIP Agent (acting at the direction of the Required Term DIP Lenders);

(k) any of the Debtors uses the DIP Facility for any item other than those set forth in the Approved Budget or the Carve-Out, except as agreed in writing in advance by the Term DIP Agent (acting at the direction of the Required Term DIP Lenders);

(l) any of the Debtors (or any party with the support of any of the Debtors) shall file a plan of reorganization in any of the Cases if the filing of such plan is made without the prior written consent of the Term DIP Agent (acting at the direction of the Required Term DIP Lenders);

(m) any uninsured judgments are entered with respect to any post-petition liabilities against any of the Debtors or any of their respective properties in a combined aggregate amount in excess of \$500,000 unless stayed, vacated or satisfied for a period of twenty (20) calendar days after entry thereof;

(n) the Debtors' existing Chief Restructuring Officer ceases to serve in such capacity or is replaced, unless such replacement is reasonably acceptable to the Required Term DIP Lenders in their reasonable discretion;

(o) the failure of the Debtors to meet any of the following milestones within two (2) business days, unless extended or waived by the Term DIP Agent at the direction of the Required Term DIP Lenders:

(i) to obtain entry of the Final Order in form and substance satisfactory to the Term DIP Agent and the Required Term DIP Lenders in their sole discretion on or before the forty-fifth (45th) day after the Petition Date;

(ii) to obtain this Court's confirmation of the plan of reorganization contemplated by that certain Plan Support Agreement, dated as of June 8, 2015 (the "PSA"), by and among the Debtors, the Debtors' controlling equityholder, the Term

Secured Parties party thereto, the Bridge Secured Parties party thereto and the ABL Secured Parties party thereto (the "Chapter 11 Plan") by no later than September 22, 2015;

(iii) to consummate all transactions contemplated by the Chapter 11 Plan on or before October 6, 2015;

(p) there shall exist and continue to exist certain materially adverse employee benefit or environmental liabilities of the Debtors, except for such liabilities which are in existence on the Petition Date and disclosed on Schedule 9.1 to the Term DIP Loan Agreement;

(q) any Debtor asserts a right of subrogation or contribution against any other Debtor prior to the date upon which all Term DIP Obligations have been paid in full and all DIP Loan Commitments have been terminated;

(r) the Debtors seek to sell any of their assets outside the ordinary course of business, unless (i) the proceeds of such sale are used to indefeasibly pay the Term DIP Obligations in full in cash, and (ii) such sale is pursuant to bidding procedures approved by the Term DIP Agent (acting at the direction of Required Term DIP Lenders);

(s) the Debtors filing of a plan of reorganization in the Cases that does not propose to indefeasibly repay the Term DIP Obligations in full in cash, unless otherwise consented to by the Term DIP Agent (acting at the direction of Required Term DIP Lenders);

(t) any of the Debtors (or any party with the support of any of the Debtors) shall challenge the validity or enforceability of any of the Term DIP Loan Documents, the Term Loan Documents or the Bridge Loan Documents;

(u) any Debtor shall make any a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness, trade payables or other pre-petition claims against any Debtor, unless expressly provided in the Orders or consented to by the Term DIP Agent at the direction of the Required Term DIP Lenders; or

(v) the termination of the PSA by any party thereto.

Authorization to Use Proceeds of Term DIP Facility and Adequate Protection

13. Authorization to Use Proceeds of Term DIP Facility. Subject to the terms and conditions of this Interim Order and the Term DIP Loan Documents, and in accordance with an Approved Budget, the Debtors are authorized to use the proceeds of the Term DIP Facility in accordance with this Interim Order. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, except as permitted in this Interim Order and the Term DIP Loan Documents, and in accordance with an

Approved Budget.

14. Adequate Protection.

(a) Term Secured Party Adequate Protection Liens and Claims. Pursuant to Sections 361, 363(e), 364(d) and 507(b) of the Bankruptcy Code, as adequate protection of the interests of the Term Secured Parties, the Debtors hereby grant to the Term Agent, on behalf of itself and the other Term Secured Parties, the following:

(i) continuing, valid, binding, enforceable and perfected postpetition “replacement” liens on the Term Collateral to the extent of any post-petition Diminution in Value of the Term Secured Parties’ interest in the Term Collateral (the “Senior Term Adequate Protection Liens”), which liens will be junior only to the DIP Liens, the Term Permitted Prior Liens, the Term Pre-Petition Liens and the Carve-Out;

(ii) continuing, valid, binding, enforceable and perfected postpetition liens on the ABL Collateral (the “Junior Term Adequate Protection Liens”; together with the Senior Term Adequate Protection Liens, collectively, the “Term Adequate Protection Liens”), which liens will be junior only to the DIP Liens, the ABL Permitted Prior Liens, the ABL Pre-Petition Liens, the ABL Senior DIP Liens, the Senior ABL Adequate Protection Liens (as defined below) and the Carve-Out; and

(iii) an allowed superpriority administrative expense claim in each of the Cases to the extent of any post-petition Diminution in Value of the Term Secured Parties’ interest in the Term Collateral (the “Term Superpriority Claims”), which claims will be junior only to the Term DIP Obligations, the

Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Carve-Out and, with respect to the DIP Collateral, any validly perfected secured claim, and be payable from and have recourse to all assets and property of the Debtors; provided, however, that an amount of the Term Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, rank *pari passu* with the ABL Superpriority Claims.

(b) ABL Secured Party Adequate Protection Liens and Claims. Pursuant to Sections 361, 363(e), 364(d) and 507(b) of the Bankruptcy Code, as adequate protection of the interests of the ABL Secured Parties, the Debtors hereby grant to the ABL Agent, on behalf of itself and the other ABL Secured Parties, the following:

(i) continuing, valid, binding, enforceable and perfected postpetition “replacement” liens on the ABL Collateral to the extent of any post-petition Diminution in Value of the ABL Secured Parties’ interest in the ABL Collateral (the “Senior ABL Adequate Protection Liens”), which liens will be junior only to the ABL Senior DIP Liens, the ABL Pre-Petition Liens, the ABL Permitted Prior Liens, and the Carve-Out;

(ii) continuing, valid, binding, enforceable and perfected postpetition liens on the Term Collateral (the “Junior ABL Adequate Protection Liens”; together with the Senior ABL Adequate Protection Liens, collectively, the “ABL Adequate Protection Liens”; together with the Term Adequate Protection Liens, collectively, the “Adequate Protection Liens”), which liens will be junior only to the DIP Liens, the Term Pre-Petition Liens, the Term Permitted Prior Liens, the

ABL Senior DIP Liens, the Senior Term Adequate Protection Liens and the Carve-Out; and

(iii) an allowed superpriority administrative expense claim in each of the Cases to the extent of any post-petition Diminution in Value of the ABL Secured Parties' interest in the ABL Collateral (the "ABL Superpriority Claims"; together with the Term Superpriority Claims, collectively, the "Superpriority Claims"), which claims will be junior only to the Term DIP Obligations, the Superpriority Term DIP Claim, the Superpriority ABL DIP Claim, the Term Superpriority Claims, the Carve-Out and, with respect to DIP Collateral constituting Term Collateral, any validly perfected secured claim, and be payable from and have recourse to all assets and property of the Debtors; provided, however, that an amount of the ABL Superpriority Claims equal to the Incremental ABL DIP Amount shall, at all times during the period that the obligations under the ABL DIP Facility remain outstanding, rank *pari passu* with the Term Superpriority Claims.

(iv) Solely with respect to any conflict between the relief granted in this paragraph 14(b) and the terms of the ABL DIP Orders, the ABL DIP Orders shall control.

(c) Adequate Protection Payments. As further adequate protection for the Term Secured Parties, the Debtors are authorized to provide adequate protection in the form of current payment of all reasonable and documented (in summary form) out-of-pocket fees, costs and expenses of the Term Agent and the Bridge Agent (including (and limited, in the case of counsel, to) all reasonable fees, costs, disbursements and expenses of their outside counsel, King

& Spalding LLP; FTI Consulting Inc. (“FTI”), as financial advisor to the Term DIP Lenders (pursuant to that certain letter of engagement dated as of March 27, 2015, by and between King & Spalding LLP and FTI (the “FTI Engagement Letter”)); and, to the extent necessary, one firm of local counsel engaged by the Term Agent and the Bridge Agent in connection with the Cases). Subject to the Carve-Out and paragraphs 32(ii) and 40, the payments set forth in this paragraph are not and shall not be subject to any offset, defense, claim, counterclaim or diminution, or recovery, of any type, kind or nature whatsoever.

(d) Access to Books and Records. As further adequate protection for each of the Pre-Petition Secured Parties, the Debtors shall provide each Pre-Petition Agent with access to the Debtors’ books and records and such financial reports as are provided to the Term DIP Agent pursuant to Section 7.1 of the Term DIP Loan Agreement.

15. Adequate Protection Reservation. The receipt by the Term Secured Parties of the adequate protection provided pursuant to paragraph 14 of this Interim Order shall not be deemed an admission that the interests of the Term Secured Parties are indeed adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Term Secured Parties to seek additional adequate protection, subject to the terms of the Pre-Petition Intercreditor Agreement.

16. Reporting. The Debtors shall provide to the Term DIP Agent for the benefit of the Term DIP Lenders: (i) monthly consolidated financial statements of the Debtors and their subsidiaries within thirty (30) days of month-end, certified by the Debtors’ chief financial officer; (ii) quarterly consolidated financial statements of the Debtors within forty-five (45) days of fiscal quarter-end, certified by the Borrower’s chief financial officer; (iii) annual audited consolidated financial statements of the Debtors within ninety (90) days of fiscal year-end,

certified with respect to such consolidated statements by independent certified public accountants reasonably acceptable to the Term DIP Lenders, which shall not be qualified in any material respect as to scope but may contain a qualification with respect to the Cases; (iv) following delivery of the Initial Approved Budget (as defined below), and every four weeks thereafter during the Cases, an updated 13-week cash flow forecast, in each case, in form and substance satisfactory to the Term DIP Agent at the direction of the Required Term DIP Lenders (each such forecast approved by the Term DIP Agent at the direction of the Required Term DIP Lenders, an “Approved Budget”) for the subsequent 13 week period consistent with the form of the Initial Approved Budget; (v) beginning on the second Friday following the date on which all conditions precedent to the effectiveness of the Term DIP Facility have been satisfied or waived as provided therein (such date, the “Closing Date”), and on each Friday following, a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements of the Debtors for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the Initial Approved Budget or the most recently Approved Budget delivered prior to such Variance Report (as applicable) on a weekly and cumulative basis (which shall be subject to the variances set forth in the Term DIP Loan Documents), and each such Variance Report shall include explanations for all material variances and shall be certified by the chief financial officer or chief restructuring officer of the Borrower; and (vi) annual business and financial plans within at least thirty (30) days prior to the fiscal year-end. The Debtors will promptly provide notice to the Term DIP Agent, for prompt distribution to the Term DIP Lenders, of any Material Adverse Effect (as defined in the Term DIP Loan Agreement).

17. Additional Reports and Information. Further, the Debtors will provide to the Term DIP Agent, for the benefit of the Term DIP Lenders, such other reports and information as may be reasonably requested by the Term DIP Agent. In addition, the Debtors' accountants, financial advisors and consultants are hereby authorized to cooperate, consult with, and provide to the Term DIP Agent, for the benefit of the Term DIP Lenders, all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of the Debtors.

18. Section 507(b) Reservation. Subject to the Carve-Out, nothing herein shall impair or modify the application of Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for any Diminution in Value during any of the Cases.

Provisions Common to Term DIP Facility

19. Amendment of the Term DIP Loan Documents or this Interim Order. Except for actions expressly permitted to be taken by the Term DIP Agent or the Term DIP Lenders, no amendment, modification, termination or waiver of any provision of the Term DIP Loan Documents or this Interim Order or any other related documents, or any consent to any departure by any of the Debtors therefrom, shall in any event be effective unless the same shall be in writing (it being understood that any necessary signatures may be on a document consenting to such amendment, modification, termination, or waiver) and (a) in the case of an amendment to cure any ambiguity, non-material omission, defect or inconsistency, signed by the Term DIP Agent and the Debtors, and (b) in the case of any other amendment, modification, termination or waiver, signed by the Debtors, the Term DIP Agent and the Term DIP Lenders. In the event of any such amendment, modification, termination or waiver, the Term DIP Agent shall provide notice thereof to the Pre-Petition Agents, the ABL DIP Agent, the Committee and the U.S.

Trustee no less than three (3) days prior to the effective date thereof (or such shorter period as to which such parties may agree).

20. Budget.

(a) The Debtors have prepared and delivered an initial 13-week budget to the Term DIP Agent (the "Initial Approved Budget"), which reflects the Debtors' anticipated cumulative cash receipts, expenditures and net cash flow on a weekly basis and all necessary and required cumulative expenses that the Debtors, in consultation with any financial advisors engaged by the Term DIP Agent, expect to incur during each week of the Initial Approved Budget. The Debtors' actual aggregate disbursements shall not exceed the aggregate amount of disbursements in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for the applicable period by more than the Permitted Variance (as defined below), and (ii) actual aggregate cash receipts (excluding proceeds of the Term DIP Facility that may be deemed a receipt) during the applicable period shall not be less than the aggregate amount of such cash receipts in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for such period by more than the Permitted Variance; provided, however, that a Default or Event of Default (each as defined in the Term DIP Loan Agreement) shall not be deemed to occur on account of the failure to meet one of such aggregate cash receipts covenants if the Debtors receive sufficient additional receipts within three (3) business days after the applicable date of determination that, when added to the receipts as of the applicable date of determination, would enable the Debtors to satisfy such covenant.

(b) "Permitted Variance" will mean (i) any favorable variance, (ii) an unfavorable variance of no more than 10% with respect to the first four weeks after the Closing Date and on a rolling basis with respect to each subsequent four-week period (each such period,

a “Testing Period”). The Permitted Variance with respect to each Testing Period shall be determined and reported to the Term DIP Agent and the Term DIP Lenders not later than the Friday immediately following each such Testing Period. Subject to paragraph 20(a), variances, if any, from the Initial Approved Budget or any subsequently Approved Budget, and any proposed changes to the Initial Approved Budget or any Approved Budget, shall be subject to the approval of the DIP Agent at the direction of the Requisite DIP Lenders.

(c) The Initial Approved Budget shall be modified or supplemented from time to time consistent with the provisions of paragraph 16 hereof (i.e., a revised 13-week cash flow forecast that must be approved by the Term DIP Agent at the direction of the Required Term DIP Lenders), in each case without further notice, motion or application to, order of, or hearing before, this Court. For all purposes hereunder, (i) the Initial Approved Budget shall constitute an “Approved Budget,” and (ii) any Approved Budget shall replace any prior Approved Budgets (including the Initial Approved Budget) for all Testing Periods ending after the approval of such Approved Budget.

21. Budget Compliance. Except as otherwise provided herein or approved by the Term DIP Agent, the Debtors will not, and will not permit any subsidiary directly or indirectly to, use any cash or the proceeds of the Term DIP Facility in a manner or for a purpose other than those consistent with an Approved Budget and this Interim Order.

22. Modification of Automatic Stay. The automatic stay imposed by Section 362(a) of the Bankruptcy Code is hereby modified as necessary to permit: (a) the Debtors to grant the DIP Liens and the Term Superpriority Claims, and to perform such acts as the Term DIP Agent may request to assure the perfection and priority of the DIP Liens; (b) the Debtors to take all appropriate action to grant the Term Adequate Protection Liens and the Term Superpriority

Claims set forth in paragraph 14 hereof, and to take all appropriate action to ensure that the Term Adequate Protection Liens granted thereunder are perfected and maintain the priority set forth herein; (c) the Debtors to incur all liabilities and obligations to the Term Secured Parties, the Term DIP Agent and the Term DIP Lenders as contemplated under this Interim Order; (d) the Debtors to pay all amounts referred to, required under, in accordance with, and subject to the Term DIP Loan Documents and this Interim Order; (e) the Term DIP Agent, the Term DIP Lenders and the Term Secured Parties to exercise, upon the occurrence and during the continuance of any Event of Default under the Term DIP Loan Documents, all rights and remedies provided for in the Term DIP Loan Documents or the Term Loan Documents and take any or all actions provided therein; (f) the Debtors to execute any amendments to the Term DIP Loan Documents agreed to in writing with the Term DIP Agent and the Term DIP Lenders; and (g) the implementation of the terms of this Interim Order.

23. Perfection of DIP Liens and Post-Petition Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of all liens granted herein, including, without limitation, the DIP Liens and the Term Adequate Protection Liens, without the necessity of execution, filing or recording any financing statement, mortgage, notice or other instrument or document that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable law) such liens, or to entitle the Term Secured Parties, the Bridge Secured Parties, the Term DIP Agent or the Term DIP Lenders to the priorities granted herein. Notwithstanding the foregoing, each of the Term DIP Agent and the Pre-Petition Agents (subject to the terms of the Pre-Petition Intercreditor Agreement) is authorized to execute, file or record and the Term DIP Agent may

require the execution, filing or recording, as each, in its sole discretion deems necessary, such financing statements, mortgages, notices of lien, and other similar documents to perfect in accordance with applicable law or to otherwise evidence the DIP Liens and/or Adequate Protection Liens, as applicable, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and/or the Adequate Protection Liens. The Debtors are authorized to execute and deliver promptly upon demand to the Term DIP Agent or the Pre-Petition Agents all such financing statements, mortgages, notices, and other documents as the Term DIP Agent or the Pre-Petition Agents, as applicable, may reasonably request. The Term DIP Agent and the Pre-Petition Agents, in their respective discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instruments.

24. After-Acquired Property. Except as otherwise provided in this Interim Order, pursuant to Section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including, without limitation, all DIP Collateral pledged or otherwise granted to the Term DIP Agent and/or the Term DIP Lenders pursuant to this Interim Order, is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes (x) ABL Collateral, or (y) proceeds of property of the Debtors that is subject to a Term Permitted Prior Lien.

25. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed in any of the Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Sections 364(b), (c), or (d) of the Bankruptcy Code in violation of this Interim Order or the Term DIP Loan Documents at any time prior to the indefeasible payment in full in cash of all of the Pre-Petition Obligations and the indefeasible payment in full in cash of all of the Term DIP Obligations, the satisfaction of the Superpriority Term DIP Claims, and the termination of the Term DIP Agent's and the Term DIP Lenders' obligations to extend credit under the Term DIP Facility and this Interim Order, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the Term DIP Agent to be applied, subject to the Carve-Out, the Term Permitted Prior Liens, the ABL Permitted Prior Liens, the ABL Obligations, the ABL Senior DIP Liens, the Superpriority ABL DIP Claim (to the extent of the Incremental ABL DIP Amount) and the terms of the Pre-Petition Intercreditor Agreement, (a) to the Term DIP Obligations, and (b) after the full satisfaction of the Term DIP Obligations, to the outstanding amounts owing in accordance with the Pre-Petition Loan Documents (i.e., the Pre-Petition Obligations).

26. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all Term DIP Obligations and the termination of the Term DIP Lenders' obligation to extend credit under the Term DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under this Interim Order and the Term DIP Loan Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by this Interim Order and any order that may be entered by this Court in accordance with this Interim Order.

27. Insurance Policies. The Debtors shall continue to maintain all property, operational and other insurance as required and as specified in the Term DIP Loan Documents. Upon entry of this Interim Order, each of the Term DIP Agent and the Term DIP Lenders shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

28. Disposition of or New Liens on DIP Collateral. Subject to paragraph 37 hereof, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral (other than ABL Collateral) unless such sale, transfer, lease, encumbrance or other disposition (i) results in payment in full of the Term DIP Obligations and the Term Obligations in cash, other than in the ordinary course of business without the prior written consent of the Term DIP Agent acting at the direction of the Required Term DIP Lenders (and no such consent shall be implied from any other action, inaction or acquiescence by the Term DIP Agent, except as otherwise provided for herein), or (ii) is expressly permitted by the Term DIP Loan Documents. Absent further order of this Court, the Debtors shall not create or permit to exist any post-petition liens or encumbrances on any of their assets or property except any post-petition liens allowed pursuant to the Term DIP Loan Documents, post-petition liens created in connection with the ABL DIP Facility and as otherwise agreed to by Term DIP Agent (acting at the direction of the Required Term DIP Lenders) in writing.

29. DIP Termination Date. On the Maturity Date (as defined in the Term DIP Loan Agreement), all Term DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the Term DIP Facility will terminate.

30. Rights and Remedies Upon Termination Event. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without order of or application or motion to this Court, immediately upon the occurrence and during the continuance of a Termination Event: (a) the Term DIP Agent may (and, at the direction of the Required Term DIP Lenders, shall), by written notice to the Debtors, their counsel, the U.S. Trustee and any counsel for the Committee, if any, terminate the Term DIP Facility, declare the Term DIP Obligations to be immediately due and payable and, subject to the immediately following clause (b), exercise all rights and remedies under the Term DIP Loan Documents and this Interim Order; and (b) the automatic stay provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Term DIP Agent and the Term DIP Lenders to exercise all rights and remedies provided for in the Term DIP Loan Documents, including to take any or all of the following actions, without further order of or application to this Court (as applicable): (i) immediately terminate the Debtors' limited use of any cash collateral; (ii) cease making any extensions of credit under the Term DIP Facility to the Debtors; (iii) declare all Term DIP Obligations to be immediately due and payable; (iv) freeze monies or balances in the Debtors' accounts (and, with respect to the Term DIP Obligations, sweep all funds contained in the TL Deposit Account (as defined in the Term DIP Loan Agreement)); (v) immediately set-off any and all amounts in accounts maintained by the Debtors with the Term DIP Agent or the Term DIP Lenders against the Term DIP Obligations, or otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable Term DIP Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the Term DIP Obligations; and (vi) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the Term DIP Loan Documents or applicable law to effect the

repayment of the Term DIP Obligations; provided, however, that prior to the exercise of any right in clauses (i), (v) or (vi) the Term DIP Agent shall be required to provide five (5) calendar days written notice (the "Remedies Notice Period") to the Debtors and the Committee of the Term DIP Agent's intent to exercise such rights and remedies; provided, further, that none of the Debtors, the Committee or any other party-in-interest (other than the ABL Agent, the ABL Lenders, the ABL DIP Agent or the ABL DIP Lenders) shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the Term DIP Loan Documents on any basis other than an assertion that a Termination Event has not occurred or has been cured within the cure periods expressly set forth herein or in the applicable Term DIP Loan Documents. During the Remedies Notice Period, the Debtors and the Committee shall be entitled to seek an emergency hearing with the Court in connection therewith. With respect to the aforementioned clauses (i), (v) and (vi), unless the Court determines during the Remedies Notice Period that a Termination Event has not occurred, or to the extent of an applicable cure period was cured within the applicable cure period as provided under the Term DIP Loan Documents: (i) the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order and the Term DIP Agent shall be permitted to exercise all rights and remedies set forth herein; (ii) the Debtors shall cooperate fully with the Term DIP Agent and the Term DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise; and (iii) the Debtors shall waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Term DIP Agent and the Term DIP Lenders set forth in the Interim and/or Final Orders and in the Term DIP Loan Documents. Any remedies taken affecting any leases or premises subject to any leases shall be in accordance with

applicable federal and state law, the Bankruptcy Code, the governing leases, consent of the applicable landlord (if required), or as otherwise ordered by the Court.

31. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. Based on the record, the Term DIP Agent and the Term DIP Lenders have acted in good faith in connection with the Term DIP Facility, the Interim Financing, and with this Interim Order, and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with Section 364(e) of the Bankruptcy Code for any amounts loaned or advanced under this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the Term DIP Agent and the Term DIP Lenders are entitled to the protections provided in Section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Term DIP Agent and the Term DIP Lenders arising prior to the effective date of any such modification, amendment, or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

32. DIP and Other Expenses.

(a) The Debtors are authorized to pay promptly, regardless of whether any transactions contemplated by the Chapter 11 Plan are ever actually consummated, all (i) reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of (A) the Term DIP Agent (including (and limited, in the case of counsel, to) all

reasonable fees, costs, disbursements and expenses of the Term DIP Agent's outside counsel, King & Spalding LLP, and, to the extent necessary, one firm of local counsel engaged by the Term DIP Agent in connection with the Cases), and (B) FTI, as financial advisor to the Term DIP Lenders (pursuant to the FTI Engagement Letter), in the case of each of the foregoing clauses (A) and (B), in connection with the negotiations, preparation, execution and delivery of the Term DIP Loan Documents and the funding of all extensions of credit under the Term DIP Facility, including, without limitation, all due diligence, transportation, computer, duplication, messenger, audit, insurance, appraisal, valuation and consultant costs and expenses, and all search, filing and recording fees, incurred or sustained by the Term DIP Agent and its counsel and professional advisors in connection with the Term DIP Facility, the Term DIP Loan Documents or the transaction contemplated thereby, the administration of the Term DIP Facility and any amendment or waiver of any provision of the Term DIP Loan Documents, and (ii) without duplication, reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses of each of the Term DIP Agent (including (and limited, in the case of counsel, to) all reasonable fees, costs, disbursements and expenses of one firm of outside counsel and, to the extent necessary, one firm of local counsel engaged by the DIP Agent in connection therewith) and professional advisors in connection with the enforcement of any rights and remedies under the Term DIP Loan Documents.

(b) The payment of fees, costs, disbursements and expenses set forth in paragraph 14(c), this paragraph 32 and paragraph 33 shall be made within ten (10) days after the receipt by the Debtors, the Committee and the U.S. Trustee (the "Review Period") of summary invoices thereof (the "Invoiced Fees") (subject in all respects to applicable privilege or work product doctrines), including a description of the services provided and the expenses incurred by

the applicable professional arising before or after the Petition Date, as applicable. The Debtors, the Committee and the U.S. Trustee may preserve their right to dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, (i) the Debtors pay in full the Invoiced Fees, including the Disputed Invoiced Fees; and (ii) the Debtors, the Committee or the U.S. Trustee files with the Court a motion or other pleading, on at least ten (10) calendar days prior written notice to the applicable parties of any hearing on such motion or other pleading, which must contain a specific basis for the objection to the Disputed Invoiced Fees and quantification of the undisputed amount of the fees and expenses invoiced. Failure to object with specificity or to quantify the undisputed amount of the invoice subject to such objection will constitute a waiver of any objection to such invoice. None of the Invoiced Fees shall be subject to this Court’s approval or required to be maintained in accordance with the U.S. Trustee Guidelines, and no recipient of any payment on account thereof shall be required to file with respect thereto any interim or final fee application with this Court. Payment of Invoiced Fees shall not be delayed based on any objections thereto, and the relevant professional shall only be required to disgorge amounts objected to upon being “so ordered” pursuant to a final non-appealable order of this Court.

33. Indemnification. Subject to the investigation rights set forth in paragraph 40 hereof, the Debtors shall jointly and severally indemnify and hold harmless the Term DIP Agent, each Term DIP Lender, any of their affiliates and each of the respective officers, directors, employees, controlling persons, agents, advisors, attorneys and representatives of each in their respective capacities as such (each, an “Indemnified Party”), from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded

against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection with or relating to the Term DIP Facility, the Term DIP Loan Documents or the transactions contemplated thereby, or any use made or proposed to be made with the proceeds of the Term DIP Facility, whether or not such investigation, litigation or proceeding is brought by any Debtor or any of its subsidiaries, any shareholders or creditors of the foregoing, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby or under the Term DIP Loan Documents are consummated, except, with respect to any Indemnified Party, to the extent such claim, damage, loss, liability or expense is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party's affiliates or their respective principals, directors, officers, employees, representatives, agents, attorneys or third party advisors. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except, with respect to any Indemnified Party, to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of such Indemnified Party or any of such Indemnified Party's affiliates or their respective principals, directors, officers, employees, representatives, agents, attorneys or third party advisors. In no event, however, shall any person be liable on any theory of liability for any special, indirect, consequential or punitive damages. The foregoing indemnity includes indemnification for the Term DIP Agent's and the Term DIP

Lenders' exercise of discretionary rights granted under this Interim Order or the Term DIP Loan Documents. In all such litigation or the preparation therefor, subject to paragraph 32, the Term DIP Agent and the Term DIP Lenders shall be entitled to select their own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

34. Proofs of Claim. The Term DIP Agent, the Term DIP Lenders and the Pre-Petition Secured Parties shall not be required to file proofs of claim in any of the Cases for any claim allowed herein. Any proof of claim filed by the Term DIP Agent, the Term DIP Lenders or the Pre-Petition Secured Parties shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by any such persons.

35. Rights of Access and Information. Without limiting the rights of access and information afforded the Pre-Petition Secured Parties, the Term DIP Agent and the Term DIP Lenders under this Interim Order, the Term DIP Loan Documents and/or the Pre-Petition Loan Documents, the Debtors shall afford representatives, agents and/or employees of the Term DIP Agent and Term DIP Lenders reasonable access to the Debtors' premises and their books and records and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors shall authorize their independent certified public accountants, financial advisors, investment bankers, and consultants to cooperate, consult with, and provide to the Term DIP Agent (and, so long as a Termination Event has occurred and is continuing, each of the Term DIP Lenders) all such information as may be reasonably requested with respect to the business, results of operations, and financial condition of any of the Debtors.

36. Access to DIP Collateral/No Landlord's Liens. Upon entry of a final order providing for such relief and subject to applicable state law, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the Term DIP Agent, for the benefit of the Term DIP Lenders, contained in this Interim Order, or otherwise available at law or in equity, and subject to the terms of this Interim Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the Term DIP Facility, the Term DIP Agent may, subject to any separate agreement by and between such landlord and the Term DIP Agent (a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to any Separate Agreement, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from such landlord; provided, however, that, subject to any such Separate Agreement, the Term DIP Agent shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the Term DIP Agent, calculated on a per diem basis. Nothing herein shall require the Term DIP Agent to assume any lease as a condition to the rights afforded to the Term DIP Agent in this paragraph.

37. Continuing Effect of Pre-Petition Intercreditor Agreement; Related Intercreditor Matters.

(i) The Debtors and the Pre-Petition Secured Parties each shall continue to be bound by, and be subject to all the terms, provisions and restrictions of, the Pre-Petition Intercreditor Agreement.

(ii) In the event of any use or sale of, or stay relief granted with respect to, the DIP Collateral consisting of Term Collateral to which the Term DIP Agent

consents, the ABL DIP Agent (in its capacity as a holder of an interest in such DIP Collateral) shall not object or be entitled to seek adequate protection in connection therewith.

(iii) In the event of any use or sale of, or stay relief granted with respect to, the DIP Collateral (other than Term Collateral) to which the agent under the ABL DIP Facility consents, the Term DIP Agent (in its capacity as a holder of an interest in such DIP Collateral) shall not object or be entitled to seek adequate protection in connection therewith.

38. Carve-Out.

(i) For the purposes of this Interim Order, the “Carve-Out” shall mean an amount equal to the sum of the following (A) one-half (1/2) of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (iii) to the extent allowed by this Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors (other than the Investment Banker) and any official committee of creditors at any time before or on the date and time of the delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of a Carve Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice; plus, (B) to the extent allowed by this Court at any time, all accrued and unpaid fees, disbursements, costs and expenses of the Investment Banker (subject to the Budget), in an amount not to exceed \$500,000 plus any

expense reimbursement owed to the Investment Banker (in each case pursuant to the Lazard Engagement Letter) less any amounts paid to the Investment Banker prior to the Petition Date pursuant to the Lazard Engagement Letter (unless the Term DIP Agent and the Required Term DIP Lenders have consented in writing to the payment of any amounts in excess thereof) at any time before or on the date and time of delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of a Carve Out Trigger Notice, whether allowed by this Court prior to or after delivery of a Carve Out Trigger Notice, plus (C) after the date and time of the delivery by the Term DIP Agent at the direction of the Required Term DIP Lenders of the Carve Out Trigger Notice, to the extent allowed by this Court at any time, all unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors and any official committee of creditors in an aggregate amount not to exceed \$75,000 (the amount set forth in this clause (C) being the “Post-Carve Out Trigger Notice Cap”); provided, however, nothing herein shall be construed to impair the ability of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by the Term DIP Agent at the direction of the Required Term DIP Lenders to the Debtors and their counsel, the U.S. Trustee, and lead counsel to any official committee, which notice may be delivered following the occurrence of an Event of Default and stating that the Post-Carve Out Trigger Notice Cap has been invoked. For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all liens securing the DIP

Obligations, the Adequate Protection Liens, all claims and any and all other forms of adequate protection, liens or claims securing the DIP Obligations.

(ii) For the avoidance of doubt, the Carve-Out shall be senior to all liens and claims (including administrative and superpriority claims) securing the Term DIP Obligations and the Term Obligations, the Bridge Obligations, the Term Adequate Protection Liens and any other liens, security interests, and claims (including administrative and superpriority claims) granted herein to the Term Secured Parties, the Bridge Secured Parties, the Term DIP Agent or the Term DIP Lenders.

(iii) Subject to paragraph 40 herein, notwithstanding anything to the contrary herein, neither the Carve-Out nor any other DIP Collateral may be used for the payment of any fees or disbursements incurred in connection with: (a) attempting to modify or otherwise alter any of the terms and conditions set forth in this Interim Order, without the prior written consent of the Term DIP Agent; (b) asserting, alleging, bringing, supporting any claim or cause of action, or the initiation or prosecution of any claim or action against the Pre-Petition Secured Parties, the Term DIP Agent or the Term DIP Lenders, including any causes of action under Chapter 5 of the Bankruptcy Code or state law of any type or nature whatsoever, against any of the Pre-Petition Secured Parties, the Term DIP Agent or any of the Term DIP Lenders, including, without limitation, challenging the amount, extent, priority, validity, perfection or enforcement of the Pre-Petition Obligations, the Term DIP Obligations, or any of the Pre-Petition Secured Parties', the Term DIP Agent's or any of the Term DIP Lenders' security interests and liens or to recover any funds previously paid to the Pre-Petition Secured Parties, the Term DIP Agent or any of the Term DIP Lenders; or (c) bringing or asserting any claims or

causes of actions against the Pre-Petition Secured Parties, the Term DIP Agent or any of the Term DIP Lenders under the Pre-Petition Loan Documents or the Term DIP Facility (as the case may be), or their respective advisors or agents, including formal discovery proceedings in anticipation thereof, and/or challenging any lien, security or interest of Pre-Petition Secured Parties under the Pre-Petition Loan Documents in the Pre-Petition Collateral or of the Term DIP Agent and the Term DIP Lenders under this Interim Order in the DIP Collateral.

39. Payment of Compensation. So long as an unwaived Termination Event has not occurred, and to the extent permitted under this Interim Order (including the dollar caps provided in paragraphs 11(b) and 38 hereof), the Debtors are authorized to pay fees and expenses allowed and payable, as applicable, by any interim, procedural, or final order of this Court (that has not been vacated or stayed, unless the stay has been vacated) under Sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable.

40. Investigation Rights. The Committee and any other parties in interest (other than the Debtors) are permitted to undertake a Challenge (as defined below). Any party (other than the Debtors, which have waived any Challenge rights), including the Committee, shall have a maximum of sixty (60) calendar days after the appointment of the Committee, if any, but in no event later than the earlier to occur of (x) seventy-five (75) calendar days from entry of the Interim Order and (y) the confirmation hearing with respect to the Chapter 11 Plan (the "Ch. 11 Challenge Period") to investigate and commence an adversary proceeding or contested matter, as required by the applicable Bankruptcy Rules, and challenge (each, a "Challenge") the findings, the Debtors' stipulations, or any other stipulations contained in this Interim Order or any Final Order, including, without limitation, any challenge to the validity, priority or enforceability of

the Term Pre-Petition Liens, or to assert any claim or cause of action against the Term Agent, the Bridge Agent, the Term Lenders or the Bridge Lenders arising under or in connection with the Term Loan Documents, the Bridge Loan Documents, the Term Obligations or the Bridge Obligations, as the case may be, whether in the nature of a setoff, counterclaim or defense of Term Obligations or Bridge Obligations, or otherwise. If the Cases are converted to cases under chapter 7 of the Bankruptcy Code prior to the latest date by which the Ch. 11 Challenge Period would end pursuant to the immediately preceding sentence, then any chapter 7 trustee appointed in such converted cases shall have a maximum of sixty (60) calendar days (the “Ch. 7 Challenge Period” and, together with the Ch. 11 Challenge Period, the “Challenge Period”) after the date that the Cases are converted to bring any such Challenge. The Challenge Period may only be extended: (a) with the prior written consent of counsel to the Term DIP Agent (at the direction of the Required Term DIP Lenders), as memorialized in an order of this Court, or (b) pursuant to an order of this Court upon a showing of good cause for such extension. Except to the extent asserted in an adversary proceeding or contested matter filed during the Challenge Period, upon the expiration of such applicable Challenge Period (to the extent not otherwise waived or barred), (i) any and all Challenges or potential challenges shall be deemed to be forever waived and barred; (ii) all of the agreements, waivers, releases, affirmations, acknowledgements and stipulations contained in this Interim Order and any Final Order shall be irrevocably and forever binding on the Debtors, the Committee and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, including any chapter 7 trustee, without further action by any party or this Court; (iii) the Term Obligations and the Bridge Obligations shall be deemed to be finally allowed and the Term Pre-Petition Liens shall be deemed to constitute valid, binding and enforceable encumbrances, and not subject to avoidance pursuant to the Bankruptcy Code or

applicable non-bankruptcy law; and (iv) the Debtors shall be deemed to have released, waived and discharged the Released Parties from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Term Obligations. Notwithstanding anything to the contrary herein: (x) if any Challenge is timely commenced, the stipulations contained in the Final Order shall nonetheless remain binding on all other parties-in-interest and preclusive except to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (y) the Released Parties reserve all of their rights to contest on any grounds any Challenge. Nothing in this Interim Order vests or confers on any person, including, without limitation, the Committee or any other statutory committee that may be appointed in any of these Cases, standing or authority to pursue any cause of action, claim, defense, or other right belonging to the Debtors or their estates.

41. 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.

42. Section 506(c) Claims. Upon entry of a Final Order providing for such relief, except for the Carve-Out, no costs or expenses of administration that have been or may be incurred in any of the Cases at any time shall be charged against the Term DIP Agent, any of the Term DIP Lenders, the Term Secured Parties or any of their respective claims or liens (including any claims or liens granted pursuant to this Interim Order) or the DIP Collateral pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

43. Section 552(b). Upon entry of a Final Order providing for such relief, the Pre-Petition 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) shall not apply

to the Pre-Petition Agents (on their own behalf and on behalf of the applicable other Pre-Petition Secured Parties) with respect to proceeds, products, offspring, or profits of any of the Pre-Petition Collateral.

44. No Marshaling/Application of Proceeds. Upon entry of a Final Order providing for such relief, in no event shall the Term DIP Agent, the Term DIP Lenders or the Pre-Petition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Pre-Petition Collateral, as applicable, and all proceeds shall be received and applied in accordance with this Interim Order.

45. Reserved.

46. Right to Credit Bid. Subject to paragraph 40, each of the Term Agent and the Term DIP Agent shall have the right, without further Court authorization, to “credit bid” the full amount of their respective claims (with interest, to the extent allowed) in connection with any sale of all or any portion of the Debtors’ assets, including, without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code. In connection with the foregoing, each of the Term Agent and the Term DIP Agent shall have the right to assign their right to purchase all or any portion of the Debtors’ assets in connection with any such “credit bid” to a newly-formed acquisition vehicle.

47. Release. Upon entry of a Final Order providing for such relief and subject to paragraph 40, the Debtors agree to forever waive and release any and all claims and causes of action against the Pre-Petition Secured Parties, the Term DIP Agent and the Term DIP Lenders whether at law or in equity, arising under or relating to the Term DIP Facility, Section 105 and

Chapter 5 of the Bankruptcy Code and under any other similar provisions of applicable state or federal law.

48. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Term DIP Agent's or the Term DIP Lenders' rights to seek any other or supplemental relief in respect of the Debtors; (b) the rights of the Term DIP Agent and the Term DIP Lenders under the Term DIP Loan Documents, the Bankruptcy Code or under applicable law, including, without limitation, the right (i) upon the occurrence and during the continuation of a Termination Event, to (A) request modification of the automatic stay of Section 362 of the Bankruptcy Code, (B) request dismissal of any of the Cases, conversion of any or all of the Cases to a case under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (C) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans of reorganization, or (ii) to object to the application or motion by any professionals retained by the Debtors or any Committee for the payment of fees and expenses, including, without limitation, in connection with the Carve-Out; or (c) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the Pre-Petition Secured Parties, the Term DIP Agent or the Term DIP Lenders. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors' or any party-in-interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Interim Order.

49. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood,

however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of this Interim Order.

50. No Waiver by Failure to Seek Relief. The Term DIP Agent's or any Term DIP Lender's delay or failure to exercise rights and remedies under the Term DIP Loan Documents, applicable law, or this Interim Order shall not constitute a waiver of any of the Term DIP Agent's or such Term DIP Lenders' respective rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed by the Term DIP Agent or such Term DIP Lenders, as applicable.

51. Binding Effect of this Interim Order. Pursuant to Bankruptcy Rules 6004(h) and 7062, immediately upon entry by this Court, this Interim Order shall inure to the benefit of the Debtors, the Pre-Petition Secured Parties, the ABL DIP Agent, the ABL DIP Lenders, the Term DIP Agent and the Term DIP Lenders, and it shall become valid and binding upon the Debtors, the Pre-Petition Secured Parties, the ABL DIP Agent, the ABL DIP Lenders, the Term DIP Agent and the Term DIP Lenders, their respective successors and assigns, any and all other creditors of the Debtors, any committee appointed in any of the Cases or any Successor Cases, including, without limitation, the Committee, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of any of the Debtors in any of the Cases or any Successor Cases, or upon dismissal of any of the Cases or any Successor Cases. Further, upon entry of this Interim Order: (a) the Debtors' admissions contained herein shall be binding on the Debtors; and (b) the Term DIP Obligations of the Debtors under the Term DIP Loan Documents shall constitute allowed claims for all purposes in any of the Cases or any Successor Cases for any amounts loaned or advanced pursuant to this Interim Order.

52. Interim Order Controls. In the event of any inconsistency between the terms and conditions of the Term DIP Loan Documents, any other document or any other order of this Court approving the Term DIP Loan Documents (other than the Final Order) and of this Interim Order, the provisions of this Interim Order shall govern and control.

53. Survival. Unless otherwise agreed to by the Term DIP Agent, the provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order that may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any or all of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any or all of the Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or any Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections (as applicable) granted to the Pre-Petition Secured Parties, the Term DIP Agent or the Term DIP Lenders pursuant to this Interim Order, notwithstanding the entry of any such order, shall continue in any of the Cases or any Successor Cases, or following dismissal of any of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order. The terms and provisions concerning the indemnification of the Pre-Petition Secured Parties, the Term DIP Agent and the Term DIP Lenders shall continue in any of the Cases or any Successor Cases following dismissal of any of the Cases or any Successor Cases, termination of the provisions of this Interim Order, and/or the indefeasible repayment of the Pre-Petition Obligations and/or the Term DIP Obligations.

54. Entry of this Interim Order/Waiver of Applicable Stay. The Clerk of this Court is hereby directed to forthwith enter this Interim Order on the docket of this Court maintained in regard to the Cases. This Interim Order shall be effective upon its entry and not subject to any

stay (all of which are hereby waived), notwithstanding anything to the contrary contained Bankruptcy Rule 4001(a)(3).

55. Notice of Entry of this Interim Order. The Debtors' counsel shall serve a copy of this Interim Order or a suitable notice respecting same on all of the following parties: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (d) counsel to the Term DIP Agent for itself and for the Term DIP Lenders; (e) counsel to the Term Agent for itself and for the other Term Secured Parties; (f) counsel to the ABL Agent for itself and for the other ABL Secured Parties; (g) counsel to the DIP ABL Agent for itself and for the other ABL Secured Parties; (h) all other known parties with liens of record on assets of the Debtors as of the Petition Date; (i) all financial institutions at which the Debtors maintain deposit accounts; (j) the landlords for all non-residential real properties occupied by the Debtors as of the Petition Date; and (k) all other parties required to receive notice pursuant to Bankruptcy Rules 2002, 4001 or 9014 and applicable Local Rules or requesting to receive notice prior to the date hereof.

56. Final Hearing. The Final Hearing shall take place on [____], 2015 at [____] [a.m./p.m.], and parties shall have until [____], 2015 at [____] [a.m./p.m.] to file an objection if necessary and serve such objection on [_____]. In the event this Court modifies any of the provisions of this Interim Order or other documents following the Final Hearing, such modifications shall not affect the rights and priorities of the Term DIP Agent and the Term DIP Lenders pursuant to this Interim Order with respect to the DIP Collateral and any portion of the Term DIP Facility that arises, or is incurred or is advanced prior to such modifications (or otherwise arising prior to

such modifications), and this Interim Order shall remain in full force and effect except as specifically modified pursuant to the Final Hearing.

57. Effect of this Interim Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 and 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order. The requirements set forth in Bankruptcy Rule 6003(b) have been satisfied. The requirements of Bankruptcy Rule 6004(a) are waived.

58. Retention of Jurisdiction. This Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the Term DIP Facility and/or this Interim Order.

SO ORDERED by this Court this _____ day of June, 2015.

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

TERM DIP LOAN AGREEMENT

\$60,000,000

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

among

BOOMERANG TUBE, LLC
as Borrower,

THE LENDERS
FROM TIME TO TIME PARTIES HERETO, and

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent,

dated as of June [10], 2015

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of June [10], 2015, among BOOMERANG TUBE, LLC (the “Borrower”), a Delaware limited liability company and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, the several banks and other financial institutions from time to time party hereto (as further defined in Subsection 1.1, the “Lenders”), CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent (in such capacity and as further defined in Subsection 1.1, the “Administrative Agent”) for the Lenders hereunder and as collateral agent (in such capacity and as further defined in Subsection 1.1, the “Collateral Agent”) for the Secured Parties (as defined below).

The parties hereto hereby agree as follows:

W I T N E S S E T H :

WHEREAS, the Borrower and each other Loan Party (as defined herein) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the Bankruptcy Court on June [8], 2015 (the “Petition Date”);

WHEREAS, each of the Loan Parties is continuing in the possession of its assets and in the management of its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested the Lenders to extend credit to the Borrower in form of term loans on the Closing Date, in an aggregate principal amount not in excess of \$60,000,000 (the “DIP Facility”) which will be used in accordance with the Budget (as defined herein) or as otherwise permitted by the Required Lender’s written consent prior to such other use;

WHEREAS, the Borrower has requested the ABL DIP Lenders to extend credit to the Borrower in the form of a revolving loan in an aggregate principal amount not in excess of \$85,000,000 (the “ABL DIP Facility”) pursuant to the terms of that certain ABL DIP Facility Agreement;

WHEREAS, to provide security for the repayment of the loans made available pursuant hereto and payment of the other obligations of the Borrower hereunder, the Borrower has agreed to provide the Agent and the Lenders, in each case subject to the Carve-Out, with DIP Liens on the DIP Collateral (as defined herein); and

WHEREAS, the Lenders are willing to make the requested DIP Facility on the terms and conditions set forth herein:

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

SECTION 1

DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“ABL Collateral”: the “Working Capital Collateral” as defined in the ABL/Term Loan Intercreditor Agreement whether or not the same remains in full force and effect and the ABL Extension Collateral.

“ABL DIP Agent”: Wells Fargo Capital Finance, LLC, in its capacity as agent for the lenders under the ABL DIP Facility Documents, together with its successors and assigns in such capacity.

“ABL DIP Collateral”: the collateral granted to the ABL DIP Agent as security for the ABL DIP Facility Agreement.

“ABL DIP Facility”: as defined in the recitals hereto.

“ABL DIP Facility Agreement”: the ABL DIP Credit Agreement, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, among the Borrower, the lenders and other financial institutions party thereto from time to time and the ABL DIP Agent, as such agreement may be amended, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time in accordance with the Orders (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders).

“ABL DIP Facility Documents”: the “Loan Documents” as defined in the ABL DIP Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced, or replaced from time to time.

“ABL DIP Lenders”: the lenders under the ABL DIP Facility Agreement.

“ABL DIP Lien”: the Lien granted on the ABL DIP Collateral pursuant to the terms of the ABL DIP Facility Documents.

“ABL DIP Loans”: the loans borrowed under the ABL DIP Facility.

“ABL DIP Obligations”: the “Obligations” owed under the ABL DIP Facility.

“ABL DIP Superpriority Claim”: as defined in the Orders.

“ABL Extension Collateral”: Term Loan Collateral, but only to the extent it secures Priority ABL Obligations (as defined in the ABL/Term Loan Intercreditor Agreement) and not as security for any other obligations under the Senior ABL Facility.

“ABL/Term Loan Intercreditor Agreement”: the Amended and Restated Intercreditor Agreement, dated as of April 6, 2015, between the Cortland Capital Market Services LLC, as First Lien Term Agent and Second Lien Term Agent, and the Senior ABL Facility Agent, and acknowledged by certain of the Loan Parties, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

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

“ABR Loans”: DIP Loans to which the rate of interest applicable is based upon the Alternate Base Rate.

“Acceleration”: as defined in Subsection 9.1(e).

“Access”: Access Industries, Inc. and any successor in interest thereto.

“Access Management Agreement”: the Second Amended and Restated Management Consulting Agreement, dated as of June [8], 2015, by and between the Borrower and Access Tubulars, LLC, a Delaware limited liability company, as in effect on the Closing Date.

“Account”: an account (as such term is defined in Article 9 of the UCC), whether arising prior to, on or after the Petition Date.

“Adequate Protection Liens”: as defined in the Orders.

“Adjusted LIBOR Rate”: with respect to any Borrowing of Eurodollar Loans for any Interest Period, an interest rate per annum determined by the Administrative Agent to be equal to the higher of (a) (i) the LIBOR Rate for such Borrowing of Eurodollar Loans in effect for such Interest Period divided by (ii) 1 minus the Eurodollar Reserve Percentage and (b) 0.0%.

“Administrative Agency Fee Letter”: the letter agreement dated as of June [8], 2015 among the Borrower, the Lenders party thereto and the Administrative Agent.

“Administrative Agent”: as defined in the Preamble hereto and shall include any successor to the Administrative Agent appointed pursuant to Subsection 10.6.

“Administrative Agent’s Office”: the Administrative Agent’s address and, as appropriate, account as set forth in Subsection 11.2, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Affected Loans”: as defined in Subsection 4.9.

“Affiliate”: as to any specified Person, any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person

means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding the foregoing, no Lender existing immediately after the Closing Date (or after giving effect to any initial assignments in connection therewith) and after giving effect to the transactions contemplated hereby shall be deemed an Affiliate of Access or the Borrower.

“Affiliate Transaction”: as defined in Subsection 8.5.

“Agent Parties”: as defined in Subsection 11.2(e).

“Agents”: the collective reference to the Administrative Agent and the Collateral Agent and “Agent” shall mean any of them.

“Agreement”: this Credit Agreement, as amended, supplemented, waived or otherwise modified, from time to time.

“Alternate Base Rate”: for any day, a rate per annum equal to the highest of (i) the Base Rate for such day, (ii) the sum of 0.50% plus the Federal Funds Effective Rate for such day and (iii) the LIBOR Rate (determined by reference to clause (ii) of the definition thereof) plus 1.00%.

“Applicable Margin”: (a) 11.0% per annum for Eurodollar Loans and (b) 10.0% per annum for ABR Loans.

“Approved Fund”: as defined in Subsection 11.6(b).

“Asset Disposition”: any sale, lease, transfer or other disposition of shares of Capital Stock of a Subsidiary (other than directors’ qualifying shares, or (in the case of a Foreign Subsidiary) to the extent required by applicable law), property or other assets (each referred to for the purposes of this definition as a “disposition”) by the Borrower or any of its Subsidiaries (including any disposition by means of a merger, consolidation or similar transaction).

“Assignee”: as defined in Subsection 11.6(b)(i).

“Assignment and Acceptance”: an Assignment and Acceptance, substantially in the form of Exhibit E hereto.

“Bankruptcy Code”: the United States Bankruptcy Code, being Title 11 of the United States Code as enacted in 1978, as the same has heretofore been or may hereafter be amended, recodified, modified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware or any other court having competent jurisdiction over the Chapter 11 Cases from time to time.

“Base Rate”: for any day, the rate of interest per annum quoted in *The Wall Street Journal*, Money Rates Section as the “prime rate” in effect from time to time (or if such rate is at any time not available, the prime rate so quoted by any banking institution selected by the Administrative Agent), which rate is not intended to be the lowest rate charged by any such banking institution to its borrowers.

“Board”: the Board of Governors of the Federal Reserve System.

“Board of Directors”: for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of the Borrower.

“Borrower”: as defined in the Preamble hereto.

“Borrower Materials”: as defined in Subsection 7.2.

“Borrowing”: the borrowing of one Type of DIP Loans from all the Lenders having DIP Loan Commitments on a given date (or resulting from a conversion or conversions on such date) having, in the case of Eurodollar Loans, the same Interest Period.

“Borrowing Date”: any Business Day specified in a notice pursuant to Subsection 2.3 as a date on which the Borrower requests the Lenders to make DIP Loans hereunder.

“Budget”: as defined in Subsection 7.2(a). For all purposes hereunder, any subsequently approved Budget shall replace any prior Budgets (including the Initial Budget) for all Testing Periods ending after the approval of such Budget.

“Business Day”: any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located, except that, if such day relates to any Eurodollar Loan, such day shall also be a London Banking Day.

“Capital Stock”: as to any Person, any and all shares of, rights to purchase, warrants or options for, or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Capitalized Lease Obligation”: an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP. The Stated Maturity of any Capitalized Lease Obligation shall be the date of the last payment of rent or any other amount due under the related lease.

“Carve-Out”: shall have the meaning set forth in Subsection 4.14(e).

“Carve-Out Trigger Notice”: shall mean a written notice delivered by the Administrative Agent at the direction of the Required Lenders to the Loan Parties and their counsel, the United States Trustee and lead counsel to any Committee, which notice may be delivered following the occurrence of an Event of Default and stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

“Case Professionals”: shall mean any professional (other than an ordinary course professional) retained by the Borrower or the Committee pursuant to a final order of the Bankruptcy Court (which order has not been vacated or stayed, unless the stay has been vacated) under Sections 327, 328, 363 or 1103(a) of the Bankruptcy Code.

“Cash Equivalents”: any of the following: (a) money, (b) securities issued or fully guaranteed or insured by the United States of America or a member state of the European Union or any agency or instrumentality of any thereof, (c) time deposits, certificates of deposit or bankers’ acceptances of (i) any bank or other institutional lender under this Agreement or the Senior ABL Facility or any affiliate thereof or (ii) any commercial bank having capital and surplus in excess of \$500,000,000 (or the foreign currency equivalent thereof as of the date of such investment) and the commercial paper of the holding company of which is rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency), (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above, (e) money market instruments, commercial paper or other short-term obligations rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency) issued by any Person not an Affiliate of the Borrower, (f) investments in money market funds subject to the risk limiting conditions of Rule 2a-7 or any successor rule of the SEC under the Investment Company Act of 1940, as amended and (g) investments similar to any of the foregoing denominated in foreign currencies approved by the Board of Directors, but not exceeding in the aggregate at any time 10.0% of the aggregate Fair Market Value of the Cash Equivalents of the Borrower and its Subsidiaries.

“CERCLA”: shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq.

“CERCLIS”: shall mean the Comprehensive Environmental Response, Compensation and Liability Information System List established pursuant to CERCLA.

“Change in Law”: as defined in Subsection 4.11(a).

“Change of Control”: (a) the Permitted Holders shall in the aggregate cease to be the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) of 50.1% or more of the outstanding Equity Interests of Borrower or (b) a “Change of Control” as defined in the Pre-Petition Original Term Facility Agreement, Pre-Petition Priming Term Facility Agreement, the Senior ABL Facility Agreement or the ABL DIP Facility Agreement, as applicable. Notwithstanding the foregoing, the transactions contemplated

by the Prearranged Chapter 11 Plan and the PSA shall not constitute a “Change of Control” hereunder.

“Chapter 11 Cases”: as defined in the Recitals hereto.

“Closing Date”: the date on which all the conditions precedent set forth in Subsection 6.1 shall be satisfied or waived.

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

“Collateral Account Bank”: a bank consented to in writing by the Collateral Agent (such consent not to be unreasonably withheld or delayed). As of the date hereof, the Collateral Account Bank is Bank of America, N.A.

“Collateral Agent”: as defined in the Preamble hereto and shall include any successor to the Collateral Agent appointed pursuant to Subsection 10.6.

“Committed Loan Notice”: a written notice of (i) a Borrowing, (ii) a conversion of DIP Loans from one Type to the other or (iii) a continuation of Eurodollar Loans, pursuant to Subsection 4.2, which shall be substantially in the form of Exhibit H.

“Committee”: the official committee of unsecured creditors, if any, appointed in the Chapter 11 Cases.

“Commonly Controlled Entity”: an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group which includes the Borrower and which is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Sections 414(m) and (o) of the Code.

“Compliance Certificate”: as defined in Subsection 7.2(b).

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

“Cortland”: Cortland Capital Market Services LLC, and its successors.

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

“Default”: any of the events specified in Subsection 9.1, whether or not any requirement for the giving of notice (other than, in the case of Subsection 9.1(e), a Default Notice), the lapse of time, or both, or any other condition specified in Subsection 9.1, has been satisfied.

“Default Notice”: as defined in Subsection 9.1(e).

“Defaulting Lender”: subject to Subsection 2.9(b), any Lender that (i) has failed (A) to fund all or any portion of its DIP Loans within two Business Days of the date such DIP Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (B) to pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (ii) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a DIP Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (iii) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (iii) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (iv) has, or has a direct or indirect parent company that has, (A) become the subject of a proceeding under any Debtor Relief Law, or (B) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (i) through (iv) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Subsection 2.9(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Deposit Account”: any deposit account (as such term is defined in Article 9 of the UCC).

“DIP Collateral”: shall mean and include, collectively, any and all assets of each Loan Party’s estate, whether real, personal, or mixed and wherever located, of any kind, nature of description, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located, including any such property in which a lien is granted to the Collateral Agent pursuant to the Security Documents, the Orders, or any other

order entered by the Bankruptcy Court to secure the DIP Facility Obligations, and shall include, without limitation:

- (a) all Receivables and all supporting obligations relating thereto whether arising prior to the Petition Date or thereafter;
- (b) all Equipment (including motor vehicles), goods, Inventory and fixtures,
- (c) all Instruments and chattel paper,
- (d) all Letter-of-Credit Rights (whether or not the letter of credit is evidenced by a writing),
- (e) all Securities,
- (f) all Investment Property,
- (g) all Intellectual Property,
- (h) all commercial tort claims,
- (i) all General Intangibles,
- (j) all Deposit Accounts,
- (k) all books and records pertaining to the DIP Collateral,
- (l) all present and future claims, rights, interests, assets and properties recovered by or on behalf of Loan Parties or any trustee of any Loan Party (whether in the Chapter 11 Cases or any subsequent case to which any Chapter 11 Case is converted), including, without limitation, all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to, inter alia, Sections 542, 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code, subject to the terms of the Orders,
- (m) all cash (including all cash held in TL Deposit Account),
- (n) to the extent not covered by clauses (a) through (o) of this sentence, choses in action and all other personal property of the Loan Parties, whether tangible or intangible, and
- (o) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, issues, offspring, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to the Loan Parties from time to time with respect to any of the foregoing. It is the intention of the parties that if Agent shall fail to have a perfected DIP Lien in any particular property or assets of any Loan Party for any reason whatsoever, the provisions of this Agreement and/or of the Security Documents, together with the Orders, or any other order entered by the Bankruptcy Court to secure the DIP Facility Obligations, all financing statements and other

public filings relating to DIP Liens filed or recorded by Agent against the Loan Parties, would be sufficient to create a perfected DIP Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such “proceeds” of such particular property or assets shall be included in the DIP Collateral.

“DIP Facility”: as defined in the Recitals hereto

“DIP Facility Obligations”: obligations of the Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during (or that would accrue but for) the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the DIP Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower and the other Loan Parties under this Agreement and the other DIP Loan Documents.

“DIP Liens”: continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition (a) subject to the Carve-Out and subject only to certain existing Liens permitted pursuant to Section 8.6, that, under applicable law, are senior to, and have not been subordinated to, the Liens of the Collateral Agent, but only to the extent that such existing Liens are valid, perfected, enforceable and unavoidable Liens as of the Petition Date, pursuant to section 364(d)(1) of the Bankruptcy Code, first priority senior priming Liens on, and security interests in the DIP Collateral constituting Term Loan Collateral (other than ABL Extension Collateral), (b) subject to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, first priority Liens on, and security interests in, all DIP Collateral that does not constitute assets of the categories in the definitions of Term Loan Collateral or ABL Collateral, wherever located, not subject to a Lien or security interest on the Petition Date, but which shall be *pari passu* with the Lien of the ABL DIP Agent on such property to the extent such Lien of the ABL DIP Agent secures amounts outstanding from time to time under the ABL DIP Facility that, when combined with any amounts owed under the Senior ABL Facility, exceed (in the aggregate) the amount of the Senior ABL Obligations as of the Petition Date; provided, however that any pledge of the Voting Stock of a Foreign Subsidiary or Foreign Subsidiary Holdco shall be limited to 65% of the Voting Stock thereof if, in the judgment of the Lenders, the pledge of more than 65% of such Voting Stock would have materially adverse tax consequences to the Loan Parties, (c) subject to the Carve-Out, pursuant to section 364(c)(3) of the Bankruptcy Code, (x) junior Liens on, and security interests in, all present and after-acquired Term Loan Collateral, wherever located, that is subject to a perfected Lien or security interest on the Petition Date or subject to a Lien or security interest in existence on the Petition Date that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code; provided, however that any pledge of the Voting Stock of a Foreign Subsidiary or Foreign Subsidiary Holdco shall be limited to 65% of the Voting Stock thereof if, in the judgment of the Lenders, the pledge of more than 65% of such Voting Stock would have materially adverse tax consequences to the Loan

Parties, and (y) junior Liens on, and security interests in, the ABL Collateral, junior only to the Liens granted to the ABL DIP Agent in connection with the ABL DIP Facility, the Liens securing the Prepetition ABL Debt (including any replacement Liens) and any Liens that have a priority senior to the Liens securing the Senior ABL Facility Obligations and the ABL DIP Facility (in each case, as permitted by the Senior ABL Facility Agreement and the ABL DIP Facility Agreement, as applicable) and (d) first priority Liens on, and security interests in, all funds in the TL Deposit Account, in each case granted to the Agent, for the benefit of itself and the Lenders, to secure the DIP Facility Obligations.

“DIP Loan Commitment”: as to any Lender, its obligation to make DIP Loans to the Borrower pursuant to Subsection 2.1 in an aggregate amount not to exceed at any one time outstanding the amount set forth opposite such Lender’s name in Schedule A under the heading “DIP Loan Commitment”; collectively, as to all the Lenders, the “DIP Loan Commitments”. The original aggregate amount of the DIP Loan Commitments on the Closing Date is \$60,000,000.

“DIP Loan Documents”: this Agreement, any Notes, any Security Documents, the Mortgages and any other document, instrument or agreement executed in connection with the DIP Facility, each as amended, supplemented, waived or otherwise modified from time to time.

“DIP Loans”: as defined in Subsection 2.1.

“DIP Superpriority Claim”: as defined in Subsection 4.14(b).

“DIP Transactions” shall mean, collectively, the transactions contemplated under this Agreement to occur on the Closing Date, including the issuing of the DIP Loans and the payment of all fees, costs and expenses of the Administrative Agent, the Collateral Agent and the Lenders to be paid in connection with the foregoing.

“Disposition”: as defined in the definition of the term “Asset Disposition” in this Subsection 1.1.

“Disqualified Stock”: with respect to any Person, any Capital Stock that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (other than following the occurrence of a Change of Control or other similar event described under such terms as a “change of control” or an Asset Disposition after the payment in full of the DIP Facility Obligations) (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof (other than following the occurrence of a Change of Control or other similar event described under such terms as a “change of control” or an Asset Disposition after the payment in full of the DIP Facility Obligations), in whole or in part, in each case on or prior to the maturity date of the Pre-Petition Term Facilities; provided that Capital Stock issued to any employee benefit plan, or by any such plan to any employees of the Borrower or any Subsidiary, shall not constitute Disqualified Stock solely because it may be required to be repurchased or otherwise acquired or retired in order to satisfy applicable statutory or regulatory obligations.

“Dollars” and “\$”: dollars in lawful currency of the United States of America.

“Domestic Subsidiary”: any Subsidiary of the Borrower which is not a Foreign Subsidiary.

“Encana”: Encana Oil & Gas (USA) Inc.

“Environmental Costs”: any and all costs or expenses (including attorney’s and consultant’s fees, investigation and laboratory fees, response costs, court costs and litigation expenses, fines, penalties, damages, settlement payments, judgments and awards), of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way relating to, any actual or alleged violation of, noncompliance with or liability under any Environmental Laws. Environmental Costs include any and all of the foregoing, without regard to whether they arise out of or are related to any past, pending or threatened proceeding of any kind.

“Environmental Laws”: all material federal, state, provincial or local Laws, including without limitation CERCLA, and legally binding judicial and administrative orders and determinations relating to public health and safety, worker health and safety, exposure to Hazardous Substances, or to pollution or protection of the environment, including surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or ambient air, including, but not limited to: (i) those relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, emission, Release, threatened Release, control or cleanup of, or exposure to, any Hazardous Substance, or to any remedial action; and (ii) those relating to the transfer of any property or business engaged in the use, production, handling or generation of Hazardous Substances.

“Environmental Permits”: any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

“Equipment”: as to a Loan Party, all of such Loan Party’s goods (other than Inventory, farm goods and consumer goods) whether now owned or hereafter acquired and wherever located including all accessories and all replacements and substitutions therefor or accessions thereto.

“Equity Interest”: 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 nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Eurodollar Loans”: DIP Loans the rate of interest applicable to which is based upon the Adjusted LIBOR Rate.

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

“Event of Default”: any of the events specified in Subsection 9.1, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended from time to time.

“Excluded Taxes”: (a) any Taxes measured by or imposed upon the net income of any Agent or Lender or its applicable lending office, or any branch or affiliate thereof, and all franchise Taxes, branch Taxes, Taxes on doing business or Taxes measured by or imposed upon the overall capital or net worth of any such Agent or Lender or its applicable lending office, or any branch or affiliate thereof, in each case imposed: (i) by the jurisdiction under the laws of which such Agent or Lender, applicable lending office, branch or affiliate is organized or is located, or in which its principal executive office is located, or any nation within which such jurisdiction is located or any political subdivision thereof; or (ii) by reason of any connection between the jurisdiction imposing such Tax and such Agent or Lender, applicable lending office, branch or affiliate other than a connection arising solely from such Agent or Lender having executed, delivered or performed its obligations under, or received payment under or enforced, this Agreement or any Notes, and (b) any Tax imposed by FATCA.

“Exit Term Facility”: that certain term credit facility to be provided to Borrower by one or more Lenders and Pre-Petition Term Lenders (or the investment advisors, managers, Affiliates, related funds or managed accounts of each of the foregoing) in a principal amount anticipated to be \$60,000,000, the proceeds of which shall repay in full all outstanding DIP Facility Obligations.

“Extension of Credit”: as to any Lender, the making of a DIP Loan.

“Extraordinary Receipt”: any cash received by or paid to or for the account of any Person that is not contemplated in the Budget and is not in the ordinary course of business (other than any such cash received or paid from Recovery Events), including tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments; *provided, however,* that an Extraordinary Receipt shall not include indemnity payments to the extent that payments are received by any Person in respect of any third party claim against such Person and applied to pay (or to reimburse such Person for its prior payment of) such claim and the costs and expenses of such Person with respect thereto; *provided, further,* that Extraordinary Receipts shall not include Proceeds of any assets of the categories in the definition of ABL Collateral.

“Fair Market Value”: with respect to any asset or property, the fair market value of such asset or property as determined in good faith by the Board of Directors, whose determination will be conclusive.

“FATCA”: Sections 1471 through 1474 of the Code as in effect on the Closing Date (and any amended or successor provisions that are substantially comparable), and any regulations or other administrative authority promulgated thereunder or any agreement (including any intergovernmental agreement) entered into thereunder or in furtherance thereof.

“Federal District Court”: as defined in Subsection 11.13(a).

“Federal Funds Effective Rate”: for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Final Order”: the final order entered by the Bankruptcy Court in the Chapter 11 Cases authorizing and approving, among other things, the DIP Facility and the Related Transactions, which final order is in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole discretion.

“Financial Advisor”: FTI Consulting, Inc.

“FIRREA”: the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

“first priority”: with respect to any DIP Lien purported to be created in any DIP Collateral pursuant to any Security Document, that such DIP Lien is the most senior Lien to which such DIP Collateral is subject (subject to the Carve-Out and Permitted Priority Liens applicable to such DIP Collateral which have priority by operation of law (including the priority granted under the UCC to any purchase money security interests that are Permitted Priority Liens) or by contract (including pursuant to the ABL/Term Intercreditor Agreement or the Orders) permitted hereunder over the respective DIP Liens on such DIP Collateral created pursuant to the relevant Security Document).

“Fiscal Year”: any period of 12 consecutive months ending on December 31 of any calendar year.

“Foreign Subsidiary”: any Subsidiary of the Borrower which is organized and existing under the laws of any jurisdiction outside of the United States of America or that is a Foreign Subsidiary Holdco. Any subsidiary of the Borrower which is organized and existing

under the laws of Puerto Rico or any other territory of the United States of America shall be a Foreign Subsidiary.

“Foreign Subsidiary Holdco”: any Subsidiary of the Borrower, so long as such Subsidiary has no material assets other than securities or Indebtedness of one or more Foreign Subsidiaries (or Subsidiaries thereof), and intellectual property relating to such Foreign Subsidiaries (or Subsidiaries thereof) and other assets (including cash and Cash Equivalents) relating to an ownership interest in any such securities, Indebtedness, intellectual property or Subsidiaries; provided, that no Subsidiary of the Borrower shall be a “Foreign Subsidiary Holdco” if such Subsidiary is not a “Foreign Subsidiary Holdco” (or comparable term) for purposes of either the Senior ABL Facility or the ABL DIP Facility.

“FTI”: FTI Consulting, Inc.

“FTI Engagement Letter”: that certain letter of engagement dated as of March 27, 2015, by and between King & Spalding LLP and FTI.

“GAAP”: generally accepted accounting principles in the United States of America as in effect from time to time (for all other purposes of this Agreement), including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession, and subject to the following sentence. If at any time the SEC permits or requires U.S. domiciled companies subject to the reporting requirements of the Exchange Act to use IFRS in lieu of GAAP for financial reporting purposes, the Borrower may elect by written notice to the Administrative Agent to so use IFRS in lieu of GAAP and, upon any such notice, references herein to GAAP shall thereafter be construed to mean (a) for periods beginning on and after the date specified in such notice, IFRS as in effect on the date specified in such notice and as in effect from time to time (for all other purposes of this Agreement) and (b) for prior periods, GAAP as defined in the first sentence of this definition. All ratios and computations based on GAAP contained in this Agreement shall be computed in conformity with GAAP.

“General Intangibles”: as to a Loan Party, all of such Loan Party’s general intangibles, whether now owned or hereafter acquired, including all payment intangibles, all choses in action, causes of action, corporate or other business records, inventions, designs, patents, patent applications, equipment formulations, manufacturing procedures, quality control procedures, trademarks, trademark applications, service marks, trade secrets, goodwill, copyrights, design rights, software, computer information, source codes, codes, records and updates, registrations, licenses, franchises, customer lists, tax refunds, tax refund claims, computer programs, all claims under guaranties, security interests or other security held by or granted to such Loan Party all rights of indemnification and all other intangible property of every kind and nature, but, in each case, excluding all items that would not constitute general intangibles for purposes of the UCC.

“Governmental Authority”: the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority,

instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

“Guarantee”: any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantee Obligation”: as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any such obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Guarantors”: the Subsidiary Guarantors on a joint and several basis; individually, a “Guarantor”.

“Guaranty Agreement”: that certain guaranty agreement dated as of the date hereof among the Borrower, the Subsidiary Guarantors party thereto and Cortland Capital Market Services LLC, as agent for the Lenders.

“Hazardous Substances”: any substance or material, including any waste, pollutant, contaminant, hazardous substance, toxic or corrosive substance, hazardous waste, special waste, industrial substance, by-product, process-intermediate product or waste, petroleum or petroleum-derived substance or waste, chemical liquids or solids, liquid or gaseous products, or any constituent of any such substance or waste, the use, handling or disposal of which is

governed by or subject to applicable Law, including, (i) those chemicals, materials, substances, compounds, mixtures, wastes or materials included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous chemicals,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “contaminants,” or words of similar meaning or effect under any Environmental Law; (ii) any article or mixture that contains a Hazardous Substance; (iii) petroleum or petroleum products; (iv) any substance the presence of which requires reporting, investigation, removal or remediation under any Environmental Laws; (v) polychlorinated biphenyls; (vi) asbestos containing materials; (vii) toxic mold; and (viii) urea formaldehyde.

“IFRS”: International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such board, or the SEC, as the case may be), as in effect from time to time.

“Incremental ABL DIP Amount”: the amount outstanding from time to time under the ABL DIP Facility that, when combined with any amounts outstanding under the Senior ABL Facility, exceed (in the aggregate) the amount of the Senior ABL Facility Obligations as of the Petition Date.

“Incur”: issue, assume, enter into any Guarantee of, incur or otherwise become liable for; and the terms “Incurs,” “Incurred” and “Incurrence” shall have a correlative meaning; provided that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, and the payment of dividends on Capital Stock constituting Indebtedness in the form of additional shares of the same class of Capital Stock, will not be deemed to be an Incurrence of Indebtedness. Any Indebtedness issued at a discount (including Indebtedness on which interest is payable through the issuance of additional Indebtedness) shall be deemed Incurred at the time of original issuance of the Indebtedness at the initial accreted amount thereof.

“Indebtedness”: with respect to any Person on any date of determination (without duplication):

- (i) the principal of indebtedness of such Person for borrowed money;
- (ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (iii) all reimbursement obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit, bankers’ acceptances or other instruments plus the aggregate amount of drawings thereunder that have not then been reimbursed);

(iv) all obligations of such Person to pay the deferred and unpaid purchase price of property (except Trade Payables), which purchase price is due more than one year after the date of placing such property in final service or taking final delivery and title thereto;

(v) all Capitalized Lease Obligations of such Person;

(vi) the redemption, repayment or other repurchase amount of such Person with respect to any Disqualified Stock of such Person or (if such Person is a Subsidiary of the Borrower other than a Subsidiary Guarantor) any Preferred Stock of such Subsidiary, but excluding, in each case, any accrued dividends (the amount of such obligation to be equal at any time to the maximum fixed involuntary redemption, repayment or repurchase price for such Capital Stock, or if less (or if such Capital Stock has no such fixed price), to the involuntary redemption, repayment or repurchase price therefor calculated in accordance with the terms thereof as if then redeemed, repaid or repurchased, and if such price is based upon or measured by the fair market value of such Capital Stock, such fair market value shall be as determined in good faith by the Board of Directors or the board of directors or other governing body of the issuer of such Capital Stock);

(vii) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided that the amount of Indebtedness of such Person shall be the lesser of (A) the fair market value of such asset at such date of determination (as determined in good faith by the Borrower) and (B) the amount of such Indebtedness of such other Persons;

(viii) all Guarantees by such Person of Indebtedness of other Persons, to the extent so Guaranteed by such Person; and

(ix) to the extent not otherwise included in this definition, net hedging obligations of such Person related to any interest rate, commodities or currency hedging arrangements (the amount of any such obligation to be equal at any time to the termination value of such agreement or arrangement giving rise to such hedging obligation that would be payable by such Person at such time).

The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Agreement, or otherwise shall equal the amount thereof that would appear as a liability on a balance sheet of such Person (excluding any notes thereto) prepared in accordance with GAAP.

“Indemnified Agents”: as defined in Subsection 11.5.

“Indemnified Lenders”: as defined in Subsection 11.5.

“Indemnified Liabilities”: as defined in Subsection 11.5.

“Indemnitee”: as defined in Subsection 11.5.

“Individual Lender Exposure”: of any Lender, at any time, the sum of the aggregate principal amount of all DIP Loans made by such Lender and then outstanding.

“Information”: as defined in Subsection 11.16(a).

“Initial Budget”: a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning as of the week of the Petition Date, broken down by week, including the anticipated weekly uses of the proceeds of the DIP Facility for such period, which shall include, among other things, available cash, cash flow, trade payables and ordinary course expenses, total expenses and capital expenditures, fees and expenses relating to the DIP Facility, fees and expenses related to the Chapter 11 Cases, and working capital and other general corporate needs, which forecast shall be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders. Such Budget shall be in the form set forth in Schedule 7.2(a) hereto. For all purposes hereunder, the Initial Budget shall constitute a “Budget”.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Intellectual Property”: as defined in Subsection 5.9.

“Interest Payment Date”: (a) as to any ABR Loan, the last Business Day of each March, June, September and December to occur while such DIP Loan is outstanding, and the final maturity date of such DIP Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, and (c) as to any Eurodollar Loan having an Interest Period longer than three (3) months, (i) each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and (ii) the last day of such Interest Period.

“Interest Period”: with respect to any Eurodollar Loan:

(a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two or three months thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two or three months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Maturity Date shall (for all purposes other than Subsection 4.12) end on the Maturity Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a scheduled payment of any Eurodollar Loan during an Interest Period for such Eurodollar Loan.

“Interest Rate Agreement”: with respect to any Person, any interest rate protection agreement, future agreement, option agreement, swap agreement, cap agreement, collar agreement, hedge agreement or other similar agreement or arrangement (including derivative agreements or arrangements), as to which such Person is party or a beneficiary.

“Interim Order”: the interim order entered by the Bankruptcy Court in the Chapter 11 Cases authorizing and approving, among other things, the DIP Facility and the Related Transactions, which interim order is in form and substance satisfactory to the Administrative Agent and the Required Lenders in their sole discretion.

“Inventory”: goods held for sale, lease or use by a Person in the ordinary course of business, net of any reserve for goods that have been segregated by such Person to be returned to the applicable vendor for credit, as determined in accordance with GAAP.

“Investment”: in any Person by any other Person, any direct or indirect advance, loan or other extension of credit (other than to customers, dealers, licensees, franchisees, suppliers, consultants, directors, officers or employees of any Person in the ordinary course of business) or capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person. Guarantees shall not be deemed to be Investments. The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Borrower’s option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

“Investment Banker”: Lazard Frères & Co., LLC, or any replacement thereof approved by the Required Lenders.

“Investment Company Act”: the Investment Company Act of 1940, as amended from time to time.

“Investment Property”: as to any Loan Party, all of such Loan Party’s now owned or hereafter acquired securities (whether certificated or uncertificated), securities entitlements, securities accounts, commodities contracts and commodities accounts, each such term as defined in the UCC.

“Judgment Conversion Date”: as defined in Subsection 11.8(a).

“Judgment Currency”: as defined in Subsection 11.8(a).

“Law” or “Laws”: shall mean any laws, statutes, rules, codes, regulations, ordinances, decrees, requirements, orders or rules of law (including common law) enacted, promulgated, imposed or enforced by any Governmental Entity.

“Lazard Engagement Letter”: that certain letter of engagement dated as of May 4, 2015, by and between Lazard Frères & Co. LLC and the Borrower.

“Lenders”: the several banks and other financial institutions from time to time parties to this Agreement together with, in each case, any affiliate of any such bank or financial institution through which such bank or financial institution elects, by notice to the Administrative Agent and the Borrower to make any DIP Loans available to the Borrower, provided that for all purposes of voting or consenting with respect to (a) any amendment, supplementation or modification of any DIP Loan Document, (b) any waiver of any of the requirements of any DIP Loan Document or any Default or Event of Default and its consequences or (c) any other matter as to which a Lender may vote or consent pursuant to Subsection 11.1, the bank or financial institution making such election shall be deemed the “Lender” rather than such affiliate, which shall not be entitled to so vote or consent.

“Lending Office”: means with respect to any Lender and for each Type of DIP Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of DIP Loan in such Lender’s administrative questionnaire or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its DIP Loans of such Type are to be made and maintained.

“LIBOR Rate”:

(i) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (A) the ICE Benchmark Administration Limited LIBOR Rate (“ICE LIBOR”), as published by Bloomberg (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (B) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; provided that in no event may the LIBOR Rate be less than 0.0%; and

(ii) for any interest rate calculation with respect to an ABR Loan, the rate per annum equal to (A) ICE LIBOR, at approximately 11:00 a.m., London time, determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (B) if such published rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the ABR Loan being made or maintained and with a term equal to one month would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank Eurodollar market at their request at the date and time of determination; provided that in no event may the LIBOR Rate be less than 0.0%.

“Lien”: any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Limited Liability Company Agreement”: the Third Amended and Restated Limited Liability Company Agreement of Boomerang Tube, LLC dated as of October 11, 2012, as in effect on the Closing Date.

“Loan Parties”: the Borrower and the Subsidiary Guarantors; individually, a “Loan Party”.

“London Banking Day”: any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect”: other than, in each case, the commencement and continuation of the Chapter 11 Cases and/or the consummation of the transactions contemplated by the Loan Parties’ “first day” pleadings reviewed by the Administrative Agent and the Required Lenders: (a) a material adverse change in the business, properties or condition (financial or otherwise) of the Loan Parties and their Subsidiaries individually since the Petition Date; (b) a material adverse change in the ability of the Loan Parties taken as a whole to perform their obligations under any DIP Loan Document or any Pre-Petition Term Facility Agreements to which they are party; or (c) a material adverse effect upon (i) the legality, validity or enforceability of any DIP Loan Document or any Order, (ii) the perfection or priority of the DIP Liens granted to the Lenders or to the Collateral Agent for the benefit of the Lenders under any of the Collateral Documents or the Orders or (iii) the rights and remedies of the Lenders under the DIP Loan Documents taken as a whole.

“Maturity Date”: the earliest to occur of (a) the date that is one hundred twenty (120) calendar days after the Petition Date, (b) the date that any sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code is consummated, (c) if the Final Order has not been entered, the date that is forty-five (45) calendar days after the Petition Date; (d) the effective date of the Prearranged Chapter 11 Plan; and (e) the date of any acceleration of the DIP Loans hereunder or the termination of the DIP Loan Commitments hereunder.

“Maximum Rate”: as defined in Subsection 4.1(e).

“Moody’s”: Moody’s Investors Service, Inc., and its successors.

“Mortgage Policies”: fully paid American Land Title Association Lender’s Extended Coverage title insurance policies (or the equivalent in Texas) on such Mortgaged Fee Property, with endorsements and in amounts (not to exceed 100% of the fair market value of such real property as reasonably determined by the Collateral Agent) reasonably acceptable to the Administrative Agent, insuring the Mortgages to be a valid first Lien on the property described therein, free and clear of all Liens, other than Liens permitted under the Loan Documents; American Land Title Association/American Congress on Surveying and Mapping form surveys certified to the Collateral Agent in a manner reasonably satisfactory to the Collateral Agent by a licensed surveyor sufficient to allow the issuer of the Mortgage Policies to issue such Mortgage Policies without a survey exception.

“Mortgaged Fee Properties”: the collective reference to each real property owned in fee by the Loan Parties listed on Schedule 5.8 or required to be mortgaged as DIP Collateral pursuant to the requirements of Subsection 7.9, including the land and all buildings, improvements, structures and fixtures now or subsequently located thereon and owned by any such Loan Party.

“Mortgages”: each of the mortgages and deeds of trust, or similar security instruments executed and delivered by any Loan Party to the Collateral Agent, substantially in the form of Exhibit C, as the same may be amended, supplemented, waived or otherwise modified from time to time.

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

“Net Available Cash”: from an Asset Disposition or Recovery Event, an amount equal to the cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or Recovery Event or received in any other non-cash form) therefrom, in each case net of (i) all documented out-of-pocket legal, title and recording tax expenses, commissions and other reasonable and documented out-of-pocket fees and expenses incurred, and all Permitted Tax Distributions made or to be made and (without duplication) all Federal, state, provincial, foreign and local taxes required to be paid or to be accrued as a liability under GAAP, as a consequence of such Asset Disposition or Recovery Event (including as a consequence of any transfer of funds in connection with the application thereof in accordance with Subsection 8.4), (ii) all payments made, and all installment payments required to be made, on any Indebtedness (other than DIP Loans) that is secured by any assets subject to such Asset Disposition or involved in such Recovery Event, in accordance with the terms of any Lien upon such assets; provided that such payment shall only be permitted if such lien has priority over the liens securing the DIP Facility Obligations.

“Net Cash Proceeds”: with respect to any issuance or sale of any securities of the Borrower or any Subsidiary by the Borrower or any Subsidiary, or any capital contribution, or

any Incurrence of Indebtedness, the cash proceeds of such issuance, sale, contribution or Incurrence net of reasonable and documented out-of-pocket attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance, sale, contribution or Incurrence and net of taxes paid or payable as a result thereof.

“New York Courts”: as defined in Subsection 11.13(a).

“New York Supreme Court”: as defined in Subsection 11.13(a).

“Non-Consenting Lender”: as defined in Subsection 11.1(h).

“Non-Defaulting Lender”: at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Excluded Taxes”: all Taxes other than Excluded Taxes.

“Notes”: as defined in Subsection 2.2(a).

“Obligation Currency”: as defined in Subsection 11.8(a).

“Orders”: collectively, the Interim Order and the Final Order.

“Organizational Documents”: with respect to any Person, (a) the articles of incorporation, certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person and (b) the bylaws or operating agreement (or the equivalent governing documents) of such Person.

“Participant”: as defined in Subsection 11.6(c).

“Participant Register”: as defined in Subsection 11.6(b)(vi).

“Patriot Act”: as defined in Subsection 11.18.

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor thereto).

“Permitted Encumbrances”: (i) those liens, encumbrances and other matters affecting title to any Mortgaged Fee Property listed in the Mortgage Policies in respect thereof and found, on the date of delivery of such Mortgage Policies to the Collateral Agent in accordance with the terms hereof, reasonably acceptable by the Collateral Agent and (ii) zoning, building codes, land use and other similar laws and municipal ordinances which are not violated in any material respect by the existing improvements and the present use by the mortgagor of the Premises (as defined in the respective Mortgage).

“Permitted Holders”: any of the following: (i) Access and its respective Affiliates; (ii) any investment fund or vehicle managed, sponsored or advised by Access or any

Affiliate thereof, and any Affiliate of or successor to any such investment fund or vehicle; and (iii) any of the Lenders and Pre-Petition Term Lenders and their respective Affiliates.

“Permitted Investment”: an Investment by the Borrower or any Subsidiary in, or consisting of, any of the following:

- (i) receivables owing to the Borrower or any Subsidiary, if created or acquired in the ordinary course of business;
- (ii) securities or other Investments received in settlement of debts created in the ordinary course of business and owing to, or of other claims asserted by, the Borrower or any Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments, including in connection with any bankruptcy proceeding or other reorganization of another Person;
- (iii) Investments in existence set forth on Schedule 1.1(f);
- (iv) Cash Equivalents;
- (v) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business; and
- (vi) Investments in Loan Parties.

“Permitted Liens”:

- (a) Liens for taxes, assessments or other governmental charges not yet delinquent or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or a Subsidiary thereof, as the case may be, in accordance with GAAP;
- (b) Liens with respect to outstanding carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s or other like Liens arising in the ordinary course of business in respect of obligations that are not overdue for a period of more than sixty (60) days and/or that are bonded or that are being contested in good faith and by appropriate proceedings;
- (c) pledges, deposits or Liens in connection with workers’ compensation, professional liability insurance, insurance programs, unemployment insurance and other social security and other similar legislation or other insurance related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), in each case, incurred in the ordinary course of business;
- (d) pledges, deposits or Liens to secure the performance of bids, tenders, trade, government or other contracts (other than for borrowed money), obligations for utilities, leases, licenses, statutory obligations, completion guarantees, surety, judgment, appeal or performance bonds, other similar bonds, instruments or obligations, and other obligations of a like nature incurred in the ordinary course of business;

(e) (i) easements (including reciprocal easement agreements), rights-of-way, building, zoning and similar restrictions, utility agreements, covenants, reservations, restrictions, encroachments, charges, and other similar encumbrances or title defects incurred, or leases or subleases granted to others, in the ordinary course of business, that do not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole and (ii) Permitted Encumbrances;

(f) Liens existing on, or provided for under written arrangements existing on, the Closing Date;

(g) Liens arising by operation of law in the ordinary course of business;

(h) Liens on Inventory and Accounts in favor of Encana;

(i) Liens arising out of judgments, decrees, orders or awards in respect of which the Borrower or any Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, which appeal or proceedings shall not have been finally terminated, or if the period within which such appeal or proceedings may be initiated shall not have expired, in each case, not to exceed \$500,000;

(j) leases, subleases, non-exclusive licenses or sublicenses to or from third parties, in each case, incurred in the ordinary course of business; and

(k) Liens securing Indebtedness consisting of Indebtedness Incurred in compliance with Subsection 8.1(b)(i) pursuant to (a) this Agreement, the Orders and the other DIP Loan Documents, (b) the Pre-Petition Term Facilities, (c) the ABL DIP Facility and (d) the Senior ABL Facility, provided, that any Liens, ABL DIP Liens or DIP Liens, as applicable, on DIP Collateral pursuant to this clause (k) shall be subject to the Orders.

“Permitted Overadvance”: as defined in Subsection 5.16.

“Permitted Payment”: as defined in Subsection 8.2(b).

“Permitted Priority Lien”: those Permitted Encumbrances and Permitted Liens that, under applicable law, are senior to, and have not been subordinated to, the liens of the Agents under the DIP Loan Documents, but only to the extent that such liens are valid, enforceable and non-avoidable liens as of the Petition Date or, solely with respect to the ABL Collateral, to the extent that such liens secure an Incremental ABL DIP Amount under the ABL DIP Facility.

“Permitted Tax Distribution”: tax distributions by the Borrower to direct members of the Borrower at such times and in such amounts that are pursuant to and in accordance with Section 8.8 of the Limited Liability Company Agreement, taking into account any amendment, supplement or replacement of the Limited Liability Agreement occurring after the Closing Date with the consent of the Administrative Agent.

“Permitted Variances”: with respect to the Borrower’s cash receipts and disbursements shall mean (i) all favorable variances, (ii) unfavorable variances of no more than

ten percent (10%) with respect to the first four weeks after the Closing Date and on a rolling basis with respect to each subsequent four-week period (each such period, the “Testing Periods”).

“Person”: an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Petition Date”: as defined in the Preamble hereto.

“Plan”: at a particular time, any employee benefit plan which is covered by ERISA and maintained or contributed to by the Borrower or a Commonly Controlled Entity has or has or may have an obligation to contribute.

“Platform”: as defined in Subsection 7.2.

“Post-Carve-Out Trigger Notice Cap”: as defined in Subsection 4.14(e).

“Prearranged Chapter 11 Plan”: means a plan of reorganization in the Chapter 11 Cases consistent with the terms set forth in the PSA and otherwise acceptable to the Administrative Agent and the Required Lenders.

“Preferred Stock”: as applied to the Capital Stock of any corporation, Capital Stock of any class or classes (however designated) that by its terms is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

“Pre-Petition Lien”: shall mean a Pre-Petition Original Term Lien, a Pre-Petition Priming Term Lien or Senior ABL Lien, as applicable. “Pre-Petition Liens” shall mean the Pre-Petition Original Term Liens, the Pre-Petition Priming Term Liens and the Senior ABL Liens, collectively.

“Pre-Petition Original Term Agent”: Cortland Capital Market Services LLC, in its capacity as agent for the Pre-Petition Term Lenders under the Pre-Petition Original Term Facility Documents, or any successor agent under the Pre-Petition Original Term Facility Documents.

“Pre-Petition Original Term Facility”: the collective reference to the Pre-Petition Original Term Facility Agreement, any Pre-Petition Original Term Facility Documents, any notes issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original agent and lenders or other agents and lenders or otherwise, and whether provided under the original Pre-Petition Original Term Facility

Agreement or one or more other credit agreements, indentures or financing agreements or otherwise, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Pre-Petition Original Term Facility). Without limiting the generality of the foregoing, the term “Pre-Petition Original Term Facility” shall include any agreement (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Borrower as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) otherwise altering the terms and conditions thereof.

“Pre-Petition Original Term Facility Agreement”: the Credit Agreement, dated as of October 11, 2012, as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, among the Borrower and the lenders and other financial institutions party thereto from time to time and Cortland Capital Market Services LLC, as agent thereunder by succession to Bank of America, N.A., as such agreement has been and may be amended, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time in accordance with the ABL/Term Loan Intercreditor Agreement (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the Pre-Petition Original Term Facility Agreement or one or more other credit agreements or otherwise, unless such agreement, instrument or other document expressly provides that it is not intended to be and is not a Pre-Petition Original Term Facility Agreement). Any reference to the Pre-Petition Original Term Facility Agreement hereunder shall be deemed a reference to the Pre-Petition Original Term Facility Agreement then in existence.

“Pre-Petition Original Term Facility Documents”: the “Loan Documents” as defined in the Pre-Petition Original Term Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced from time to time.

“Pre-Petition Original Term Lien”: a “Lien” as defined in the Pre-Petition Original Term Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced from time to time.

“Pre-Petition Payment”: a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness, Trade Payables or other pre-petition claims against any Loan Party.

“Pre-Petition Priming Term Agent”: Cortland Capital Market Services LLC, in its capacity as agent for the Pre-Petition Term Lenders under the Pre-Petition Priming Term Facility Documents, or any successor agent under the Pre-Petition Original Term Facility Documents.

“Pre-Petition Priming Term Facility”: the collective reference to the Pre-Petition Priming Term Facility Agreement, any Pre-Petition Priming Term Facility Documents, any notes issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, and other guarantees, pledge agreements, security agreements

and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original agent and lenders or other agents and lenders or otherwise, and whether provided under the original Pre-Petition Priming Term Facility Agreement or one or more other credit agreements, indentures or financing agreements or otherwise, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Pre-Petition Priming Term Facility). Without limiting the generality of the foregoing, the term “Pre-Petition Priming Term Facility” shall include any agreement (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Borrower as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) otherwise altering the terms and conditions thereof.

“Pre-Petition Priming Term Facility Agreement”: the Credit Agreement, dated as of April 6, as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, among the Borrower and the lenders and other financial institutions party thereto from time to time and Cortland Capital Market Services LLC, as agent thereunder, as such agreement has been and may be amended, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time in accordance with the ABL/Term Loan Intercreditor Agreement (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the Pre-Petition Priming Term Facility Agreement or one or more other credit agreements or otherwise, unless such agreement, instrument or other document expressly provides that it is not intended to be and is not a Pre-Petition Priming Term Facility Agreement). Any reference to the Pre-Petition Priming Term Facility Agreement shall be deemed to be a reference to the Pre-Petition Priming Term Facility Agreement then in existence.

“Pre-Petition Priming Term Facility Documents”: the “Loan Documents” as defined in the Pre-Petition Priming Term Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced from time to time.

“Pre-Petition Priming Term Lien”: a “Lien” as defined in the Pre-Petition Priming Term Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced from time to time.

“Pre-Petition Priming Term Loans”: the loans borrowed under the Pre-Petition Priming Term Facility.

“Pre-Petition Term Agent”: the Pre-Petition Original Term Agent, or the Pre-Petition Priming Term Agent. “Pre-Petition Term Agents” shall mean the Pre-Petition Original Term Agent and the Pre-Petition Priming Term Agent, collectively.

“Pre-Petition Term Facility”: the Pre-Petition Original Term Facility or the Pre-Petition Priming Term Facility. “Pre-Petition Term Facilities” shall mean the Pre-Petition Original Term Facility and the Pre-Petition Priming Term Facility, collectively.

“Pre-Petition Term Facility Agreements”: shall mean the Pre-Petition Original Term Facility Agreement and the Pre-Petition Priming Term Facility Agreement, collectively.

“Pre-Petition Term Lender”: The lenders under the Pre-Petition Original Term Facility Agreement and the Pre-Petition Priming Term Facility Agreement, collectively.

“Pre-Petition Term Obligations”: the “Obligations” under and as defined in the Pre-Petition Original Term Facility and the Pre-Petition Priming Term Facility.

“Prepayment Date”: as defined in Subsection 4.4(d).

“PSA”: that certain Plan Support Agreement, dated as of June [8], 2015, by and among the Loan Parties, Access Tubulars LLC in its capacity as a holder of a controlling majority equity interest in the Borrower, the Pre-Petition Original Term Agent, the Pre-Petition Priming Term Agent, the Senior ABL Facility Agent and the lenders and other financial institutions from time to time party thereto as “Supporting Lenders” thereunder, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, together with all exhibits, schedules and annexes thereto.

“Public Lender”: as defined in Subsection 7.2.

“Receivable”: a right to receive payment pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay, as determined in accordance with GAAP.

“Recovery Event”: any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Loan Party giving rise to Net Available Cash to such Loan Party, as the case may be, to the extent that such settlement or payment does not constitute reimbursement or compensation for amounts previously paid by the Borrower or any other Loan Party in respect of such casualty or condemnation.

“refinance”: refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell or extend (including pursuant to any defeasance or discharge mechanism); and the terms “refinances,” “refinanced” and “refinancing” as used for any purpose in this Agreement shall have a correlative meaning.

“Register”: as defined in Subsection 11.6(b)(v).

“Regulation T”: Regulation T of the Board as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Regulation X”: Regulation X of the Board as in effect from time to time.

“Related Agreements”: the DIP Loan Documents, the PSA and all other agreements or instruments executed in connection with the Related Transactions.

“Related Parties”: with respect to any Person, such Person’s Affiliates and the partners, principals, officers, directors, trustees, employees, employees, shareholders, members, attorneys and other third party advisors, agents, representatives and controlling persons of such Person and of such Person’s Affiliates and “Related Party” shall mean any of them.

“Related Transactions” means (i) the execution, delivery and performance by the Loan Parties of this Agreement and each other DIP Loan Document to which they are a party, the initial borrowing under of the DIP Loan and the use of the proceeds thereof, and the grant of DIP Liens by the Borrower on the DIP Collateral pursuant to this Agreement, the Orders and the Security Documents, (ii) the commencement and filing of the Chapter 11 Cases and (iii) the payment of all fees, costs and expenses associated with all of the foregoing.

“Release”: any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping or disposing into the environment.

“Released Parties”: as defined in Subsection 4.17.

“Releasing Parties”: as defined in Subsection 4.17.

“Removal Effective Date”: as defined in Subsection 10.6.

“Reorganization”: with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Reportable Event”: with respect to a Single Employer Plan, any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30 day notice period is waived under Section 21, 22, 23, 24, 25, 27 or 28 of PBGC Regulation Section 4043 or any successor regulation thereto.

“Required Lenders”: Lenders, the sum of whose outstanding Individual Lender Exposures represents more than fifty percent (50%) of the sum of the Individual Lender Exposures at such time. The Individual Lender Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Requirement of Law”: as to any Person, the Organizational Documents of such Person, and any law, statute, ordinance, code, decree, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its material property or to which such Person or any of its material property is subject, including laws, ordinances and regulations pertaining to zoning, occupancy and subdivision of real properties; provided that the foregoing shall not apply to any non-binding recommendation of any Governmental Authority.

“Resignation Effective Date”: as defined in Subsection 10.6.

“Responsible Officer”: as to any Person, any of the following officers of such Person: (a) the chief executive officer or the president of such Person and, with respect to financial matters, the chief financial officer, the treasurer or the controller of such Person, (b) any vice president of such Person or, with respect to financial matters, any assistant treasurer or assistant controller of such Person, in each case who has been designated in writing to the Administrative Agent or the Collateral Agent as a Responsible Officer by such chief executive officer or president of such Person or, with respect to financial matters, by such chief financial officer of such Person, (c) with respect to Subsection 7.7 and without limiting the foregoing, the general counsel of such Person and (d) with respect to ERISA matters, the senior vice president–human resources (or substantial equivalent) of such Person.

“Restricted Payment”: as defined in Subsection 8.2(a).

“S&P”: Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc., and its successors.

“Sanctioned Entity”: (a) an agency of the government of, (b) an organization directly or indirectly controlled by, or (c) a Person resident in, a country that is subject to a sanctions program identified on the list maintained and published by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time as such program may be applicable to such agency, organization or Person.

“Sanctioned Person”: a Person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>, or as otherwise published from time to time.

“SEC”: the United States Securities and Exchange Commission.

“Secured Parties”: the Agents, the Lenders and the other secured parties identified herein or in the Security Documents.

“Security Documents”: the collective reference to each Mortgage related to any Mortgaged Fee Property, and all other similar security documents hereafter delivered to the Collateral Agent granting or perfecting a DIP Lien on any asset or assets of any Person to secure the obligations and liabilities of the Loan Parties hereunder and/or under any of the other DIP Loan Documents or to secure any guarantee of any such obligations and liabilities, including any security documents executed and delivered or caused to be delivered to the Collateral Agent pursuant to Subsections 7.9(a), 7.9(b) or 7.9(c), in each case, as amended, supplemented, waived or otherwise modified from time to time. For the avoidance of doubt, the Orders shall constitute “Security Documents” for all purposes hereunder.

“Senior ABL Facility”: the collective reference to the Senior ABL Facility Agreement, any Senior ABL Facility Documents, any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and

delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time.

“Senior ABL Facility Agent”: Wells Fargo Capital Finance, LLC, as agent under the Senior ABL Facility, together with its successors and assigns in such capacity.

“Senior ABL Facility Agreement”: the Amended and Restated Credit Agreement, dated as of October 11, 2012, among the Borrower, the Senior ABL Facility Lenders, and the Senior ABL Facility Agent, as such agreement has been and may be amended, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time.

“Senior ABL Facility Documents”: the “Loan Documents” as defined in the Senior ABL Facility Agreement, as the same may be amended, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced from time to time.

“Senior ABL Facility Lenders”: the lenders and other financial institutions from time to time party to the Senior ABL Facility.

“Senior ABL Facility Obligations”: the “Obligations” under the Senior ABL Facility.

“Senior ABL Lien”: the Lien on the ABL Collateral granted pursuant to the Senior ABL Facility Documents.

“Set”: the collective reference to Eurodollar Loans, the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Eurodollar Loans shall originally have been made on the same day).

“Settlement Service”: as defined in Subsection 11.6(b).

“Single Employer Plan”: any Plan which is covered by Title IV or Section 302 of ERISA or Section 412 of the Code, but which is not a Multiemployer Plan.

“Specified Events of Default”: certain events of default under the Senior ABL Facility, the Pre-Petition Original Term Facility or the Pre-Petition Priming Term Facility specifically set forth on Schedule 1.1(g) hereto.

“Stated Maturity”: with respect to any Indebtedness, the date specified in such Indebtedness as the fixed date on which the payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase or repayment of such Indebtedness at the option of the holder thereof upon the happening of any contingency).

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company or other entity (a) of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other

managers of such corporation, partnership, limited liability company or other entity are at the time owned by such Person, or (b) the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person and, in the case of this clause (b), which is treated as a consolidated subsidiary for accounting purposes. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor”: each Subsidiary of the Borrower which executes and delivers a Subsidiary Guaranty pursuant to Subsection 7.9 or otherwise, in each case, unless and until such time as the respective Subsidiary Guarantor (a) ceases to constitute a Subsidiary of the Borrower in accordance with the terms and provisions hereof or (b) is released from all of its obligations under the Subsidiary Guaranty in accordance with terms and provisions thereof.

“Subsidiary Guaranty”: the guaranty of the DIP Facility Obligations of the Borrower under the DIP Loan Documents provided pursuant to this Credit Agreement.

“Supermajority Lenders”: Lenders, the sum of whose outstanding Individual Lender Exposures represents more than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the sum of the Individual Lender Exposures at such time. The Individual Lender Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Superpriority Claims”: as defined in the Orders.

“Taxes”: any and all present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority.

“Term Loan Collateral”: the “Term Loan Collateral” as defined in the ABL/Term Loan Intercreditor Agreement whether or not the same remains in full force and effect.

“Termination Event”: as defined in Subsection 9.1(l).

“Testing Periods”: as defined in the definition of “Permitted Variances”.

“TL Deposit Account”: a non-interest bearing cash collateral account established and maintained by the Borrower or its Subsidiaries at an office of the Collateral Account Bank in the name, and, subject to the Orders, in the sole dominion and control of the Collateral Agent for the benefit of the Secured Parties. For the avoidance of doubt, any requirement to enter into a control agreement with respect to the TL Deposit Account shall be satisfied by entering into such agreement with the Collateral Agent, with control to be exercised in accordance with the Orders.

“Trade Payables”: with respect to any Person, any accounts payable or any indebtedness or monetary obligation to trade creditors created, assumed or guaranteed by such Person arising in the ordinary course of business in connection with the acquisition of goods or services.

“Transactions”: collectively, any or all of the following: (i) the entry into this Agreement and the DIP Loan Documents and the Incurrence of Indebtedness thereunder, (ii) the

Related Transactions and (iii) all other transactions relating to any of the foregoing (including payment of fees and expenses related to any of the foregoing).

“Transferee”: any Participant or Assignee.

“Type”: there are only two Types of DIP Loan hereunder, namely DIP Loans bearing interest based on the ABR and DIP Loans bearing interest based on the Adjusted LIBOR Rate.

“UCC”: the Uniform Commercial Code as in effect in the State of New York from time to time.

“Underfunding”: the excess of the present value of all accrued benefits under a Plan (based on those assumptions used to fund such Plan), determined as of the most recent annual valuation date, over the value of the assets of such Plan allocable to such accrued benefits.

“United States Person”: any United States person within the meaning of Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate”: as defined in Subsection 4.11(b)(ii)(2).

“Variance Report”: as defined in Subsection 7.2(a).

“Voting Stock”: as to any entity, all classes of Capital Stock of such entity then outstanding and normally entitled to vote in the election of directors or all interests in such entity with the ability to control the management or actions of such entity.

“Wholly Owned Subsidiary”: as to any Person, any Subsidiary of such Person of which such Person owns, directly or indirectly through one or more Wholly Owned Subsidiaries, all of the Capital Stock of such Subsidiary other than directors qualifying shares or shares held by nominees.

1.2. Other Definitional Provisions. Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in any Notes, any other DIP Loan Document or any certificate or other document made or delivered pursuant hereto.

(a) As used herein and in any Notes and any other DIP Loan Document, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and its Subsidiaries not defined in Subsection 1.1 and accounting terms partly defined in Subsection 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(b) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Subsection, Schedule and Exhibit references

are to this Agreement unless otherwise specified. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(c) Any financial ratios, including any required to be satisfied in order for a specific action to be permitted under this Agreement, shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

(d) Any references in this Agreement to “cash and/or Cash Equivalents” or any similar combination of the foregoing shall be construed as not double counting cash or any other applicable amount which would otherwise be duplicated therein.

(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2

AMOUNT AND TERMS OF COMMITMENTS

2.1. DIP Loans. Subject to the terms and conditions hereof, each Lender holding a DIP Loan Commitment severally agrees to make, in Dollars, in one or more draws, one or more term loans (each, an “DIP Loan”) to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name in Schedule A under the heading “DIP Loan Commitment”, as such amount may be adjusted or reduced pursuant to the terms hereof, which DIP Loans:

(i) except as hereinafter provided, shall, at the option of the Borrower, be incurred and maintained as, and/or converted into, ABR Loans or Eurodollar Loans; and

(ii) shall be made by each such Lender in an aggregate principal amount which does not exceed the DIP Loan Commitment of such Lender,

provided, however, that the aggregate principal amount of DIP Loans made available on the Closing Date shall not exceed \$35,000,000.

Once repaid, DIP Loans incurred hereunder may not be reborrowed.

2.2. Notes. (a) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, in order to evidence such Lender’s DIP Loan, the Borrower will execute and deliver to such Lender a promissory note in form and substance reasonably acceptable to the Administrative Agent and the Borrower (each, as amended, supplemented, replaced or otherwise modified from time to time, a “Note”), payable to such Lender and in a principal amount equal to the unpaid principal amount of the applicable DIP Loans made (or acquired by assignment pursuant to Subsection 11.6(b)) by such Lender to the Borrower. Each Note shall be payable as provided in Subsection 2.2(b) and provide for the payment of interest in accordance with Subsection 4.1.

(b) The unpaid aggregate principal amount of all outstanding DIP Loans shall be payable in full on the Maturity Date.

2.3. Procedure for DIP Loan Borrowing on the Closing Date. The Borrower shall have given the Administrative Agent written notice in the form of a Committed Loan Notice (which Committed Loan Notice must have been received by the Administrative Agent prior to 9:00 A.M., New York City time, and shall be irrevocable after receipt) on the Closing Date specifying the amount of the DIP Loans to be borrowed. Upon receipt of such Committed Loan Notice, the Administrative Agent shall promptly notify each applicable Lender thereof. Each Lender having a DIP Loan Commitment will make the amount of its pro rata share of the DIP Loan Commitments available to the Administrative Agent, in each case for the account of the Borrower at the office of the Administrative Agent specified in Subsection 11.2 prior to 1:00 P.M., New York City time, on the Closing Date in funds immediately available to the Administrative Agent (it being understood that in the event that any Lender does not fund the full amount of its pro rata share of the DIP Loan Commitments, each remaining Lender shall have the option of participating in the resulting shortfall in a pro rata amount based on its respective portion of the DIP Loan Commitments). The Administrative Agent shall on such date credit the account of the Borrower on the books of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent. Pending use in accordance with Subsection 7.10, all proceeds of the DIP Loans shall be deposited into the TL Deposit Account and invested at all times in cash and Cash Equivalents.

2.4. Procedure for Borrowings after the Closing Date. Each Borrowing (other than any Borrowing on the Closing Date) shall be made upon the Borrower's irrevocable notice to the Administrative Agent. Each such notice must be received by the Administrative Agent not later than 9:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Loans, and (ii) one Business Day prior to the requested date of any Borrowing of ABR Loans. Each notice by the Borrower pursuant to this Subsection 2.4(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of ABR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of DIP Loans to be borrowed, (iii) the Type of DIP Loans to be borrowed, and (iv) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of DIP Loan in a Committed Loan Notice, then the applicable DIP Loans shall be made as, or converted to, ABR Loans. Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a Borrowing of Eurodollar Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Pending use in accordance with Subsection 7.10, all proceeds of the DIP Loans shall be deposited into the TL Deposit Account and invested at all times in cash and Cash Equivalents.

2.5. Repayment of DIP Loans. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent (in the currency in which such DIP Loan is denominated) for the account of each Lender the then unpaid principal amount of each DIP Loan

of such Lender made to the Borrower, on the Maturity Date (or such earlier date on which the DIP Loans become due and payable pursuant to Section 9) without further application to or order of the Bankruptcy Court. The Borrower hereby further agrees to pay interest on the unpaid principal amount of such DIP Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Subsection 4.1.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each DIP Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain the Register pursuant to Subsection 11.6(b), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each DIP Loan made hereunder, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each applicable Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each applicable Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Subsection 2.5(c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the DIP Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

2.6. [Reserved].

2.7. [Reserved].

2.8. [Reserved].

2.9. Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Subsection 11.1.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Subsection 11.7(b) shall be applied at such time or times as may be determined by

the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any DIP Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro-rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to DIP Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any DIP Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such DIP Loans were made at a time when the conditions set forth in Subsection 6.2 were satisfied or waived, such payment shall be applied solely to pay the DIP Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any DIP Loans of such Defaulting Lender until such time as all DIP Loans are held by the Lenders pro-rata in accordance with the commitments hereunder.

(b) If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding DIP Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the DIP Loans to be held on a pro-rata basis by the Lenders in accordance with their pro rata share, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 3

DIP COLLATERAL: GENERAL TERMS

3.1. Security Interest in the DIP Collateral. To secure the prompt payment and performance of the DIP Facility Obligations to the Administrative Agent and each Lender and each other holder of any of the DIP Facility Obligations, the Borrower and each Subsidiary Guarantor hereby assigns, pledges and grants to the Collateral Agent for its benefit and for the

ratable benefit of each Lender and each other holder of any of the DIP Facility Obligations a continuing security interest in and to and DIP Lien on all of its DIP Collateral, whether now owned or existing or hereafter acquired or arising and wherever located. The Borrower and each Subsidiary Guarantor shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect the Collateral Agent's security interest. The Borrower and each Subsidiary Guarantor shall provide the Agents with written notice of all commercial tort claims promptly upon the occurrence of any events giving rise to any such claim(s) (regardless of whether legal proceedings have yet been commenced), such notice to contain a brief description of the claim(s), the events out of which such claim(s) arose and the parties against which such claims may be asserted and, if applicable in any case where legal proceedings regarding such claim(s) have been commenced, the case title together with the applicable court. Upon delivery of each such notice, the Borrower and such Subsidiary Guarantor shall be deemed to hereby grant to the Collateral Agent a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. The Borrower and each Subsidiary Guarantor shall provide the Agents with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, and at the Collateral Agent's request shall take such actions as the Collateral Agent may reasonably request for the perfection of the Collateral Agent's security interest therein.

3.2. Perfection of Security Interest. Subject to the Orders, the Borrower and each Subsidiary Guarantor shall take all action that may be necessary or desirable, or as reasonably requested by the Collateral Agent, so as at all times to maintain the validity, perfection, enforceability and priority of the Collateral Agent's security interest in and DIP Lien on the DIP Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the DIP Collateral, including, but not limited to, (i) immediately discharging all Liens other than Permitted Encumbrances and Permitted Liens, (ii) delivering to the Collateral Agent, endorsed or accompanied by such instruments of assignment as the Collateral Agent may specify, and stamping or marking, in such manner as the Collateral Agent may specify, any and all chattel paper, instruments, letters of credits and advices thereof and documents evidencing or forming a part of the DIP Collateral, (iii) at the Collateral Agent's request, entering into warehousing, lockbox and other custodial arrangements satisfactory to the Collateral Agent, and (iv) at the Collateral Agent's request, executing and delivering financing statements, control agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to the Collateral Agent, relating to the creation, validity, perfection, maintenance or continuation of the Collateral Agent's security interest and DIP Lien under the Uniform Commercial Code or other applicable Law. By its signature hereto, each Loan Party hereby authorizes the Collateral Agent to file against such Loan Party, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form and substance satisfactory to the Collateral Agent (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of collateral as "all assets" and/or "all personal property" of such Loan Party). All charges, expenses and fees the Collateral Agent may incur in doing any of the foregoing, and any local taxes relating thereto shall be paid to the Collateral Agent for its benefit and for the ratable benefit of the Lenders immediately upon demand.

3.3. [Reserved].

3.4. Preservation of DIP Collateral. Following the occurrence and during the continuance of a Default or Event of Default, in addition to the rights and remedies set forth in Subsection 10.8 hereof, the Collateral Agent may at any time take such steps as the Collateral Agent deems necessary, desirable or appropriate to protect the Collateral Agent's interest in and to preserve the DIP Collateral. Each Loan Party shall cooperate fully with all of the Collateral Agent's efforts to preserve the DIP Collateral and will take such actions to preserve the DIP Collateral as the Collateral Agent may direct.

3.5. Ownership of DIP Collateral and Assets. (a) With respect to the DIP Collateral, at the time the DIP Collateral becomes subject to the Collateral Agent's security interest: (i) the applicable Loan Party shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a first priority (subject to the Carve-Out and Permitted Priority Liens) security interest in each and every item of its respective DIP Collateral to the Collateral Agent; and, except for Permitted Encumbrances and Permitted Liens, the DIP Collateral shall be free and clear of all Liens and encumbrances whatsoever and (ii) all signatures and endorsements of any Loan Party that appear on such documents and agreements shall be genuine and each such Loan Party shall have full capacity to execute same.

(b) (i) There is no location at which any Loan Party has any Inventory (except for Inventory in transit) other than those locations listed on Schedule 3.5 (as such Schedule 3.5 may be updated at any time upon at least thirty (30) days written notice to Agent); (ii) Schedule 3.5 hereto (as such Schedule 3.5 may be updated at any time upon at least thirty (30) days written notice to Agent) contains a correct and complete list of the legal names and addresses of each warehouse at which Inventory of any Loan Party is stored; (iii) Schedule 3.5 hereto (as such Schedule 3.5 may be updated at any time upon at least thirty (30) days written notice to Agent) sets forth (A) a correct and complete list of each place of business of each Loan Party where DIP Collateral is located or stored and (B) the chief executive office of each Loan Party; and (iv) Schedule 3.5 hereto (as such Schedule 3.5 may be updated at any time upon at least thirty (30) days written notice to the Collateral Agent) sets forth a correct and complete list as of the Closing Date of the location, by state and street address, of all real property owned or leased by each Loan Party, together with the names and addresses of any landlords.

3.6. Defense of Collateral Agent's and Lenders' Interests. (a) Until (a) payment and performance in full of all of the DIP Facility Obligations and (b) termination of the DIP Loan Commitments, the Collateral Agent's interests in the DIP Collateral shall continue in full force and effect. Each Loan Party shall defend the Collateral Agent's interests in the DIP Collateral against the interests of any and all Persons whatsoever to the extent such interests are not permitted hereunder.

(b) Subject to the Orders, at any time following demand by the Administrative Agent for payment of all DIP Facility Obligations pursuant to Subsection 9.2(a) following the occurrence and during the existence of an Event of Default, the Collateral Agent shall have the right to take possession of the indicia of the DIP Collateral and the DIP Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If the Collateral Agent exercises this right to take possession of the DIP Collateral following the occurrence and during the existence of an Event of Default, each Loan Party shall, upon demand, assemble it in the best manner possible and make it available to Collateral Agent

at a place reasonably convenient to Collateral Agent. In addition, with respect to all DIP Collateral, the Collateral Agent and the Lenders shall be entitled to all of the rights and remedies set forth herein and further provided by the UCC or other applicable Law. At any time following demand by the Collateral Agent, subject to the Orders, each Loan Party shall, and the Collateral Agent may, at its option, instruct all suppliers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, Inventory (if and to the extent included in the DIP Collateral), documents or instruments in which the Collateral Agent holds a security interest to deliver same to the Collateral Agent and/or subject to the Collateral Agent's order and if they shall come into any Loan Party's possession, they, and each of them, shall be held by such Loan Party in trust as the Collateral Agent's trustee, and such Loan Party will immediately deliver them to the Collateral Agent in their original form together with any necessary endorsement.

3.7. [Reserved].

3.8. Financial Disclosure. Each Loan Party hereby irrevocably authorizes and directs all accountants and auditors employed by such Loan Party at any time during the term of this Agreement to exhibit and deliver to Agents and each Lender copies of any of such Loan Party's financial statements, trial balances or other accounting records of any sort in the accountant's or auditor's possession, and to disclose to each Agent and each Lender any information such accountants may have concerning such Loan Party's financial status and business operations. Each Loan Party hereby authorizes all Governmental Authorities to furnish to the Agents and each Lender copies of reports or examinations relating to such Loan Party, whether made by such Loan Party or otherwise; however, the Agents and each Lender will attempt to obtain such information or materials directly from such Loan Party prior to obtaining such information or materials from such accountants or Governmental Authorities.

3.9. [Reserved].

3.10. [Reserved].

3.11. [Reserved].

3.12. Failure to Pay Insurance. If any Loan Party fails to obtain insurance as provided in Subsection 7.5, or to keep the same in force, the Administrative Agent, if the Required Lenders so elect, may obtain such insurance and pay the premium therefor on behalf of such Loan Party.

3.13. [Reserved].

3.14. Payment of Leasehold Obligations. In accordance with the Bankruptcy Code and subject to any required approval by any applicable order of the Bankruptcy Court, the Loan Parties shall at all times pay, when and as due, their rental obligations under all material leases under which they are a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect and, at the Administrative Agent's request will provide evidence of having done so.

3.15. Inventory. To the extent Inventory held for sale or lease has been produced by any Loan Party, it has been and will be produced by such Loan Party in all material

respects in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations and orders thereunder.

3.16. [Reserved].

3.17. Exculpation of Liability. Nothing herein contained shall be construed to constitute the Administrative Agent or any Lender as any Loan Party's agent for any purpose whatsoever, nor shall the Administrative Agent or any Lender be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the DIP Collateral wherever the same may be located and regardless of the cause thereof, except any shortage, discrepancy, damage, loss or destruction arising from the gross negligence, willful misconduct or bad faith of the Administrative Agent or any Lender. Neither the Administrative Agent nor any Lender, whether by anything herein or in any assignment or otherwise, assume any of any the Loan Party's obligations under any contract or agreement assigned to the Administrative Agent or such Lender, and neither the Administrative Agent nor any Lender shall be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

3.18. [Reserved].

3.19. Financing Statements. Except as respects the financing statements filed by the Agents and the financing statements described on Schedule 3.19 or allowed as Permitted Encumbrances or Permitted Liens, no financing statement covering any of the DIP Collateral or any proceeds thereof is on file in any public office.

SECTION 4

GENERAL PROVISIONS APPLICABLE TO DIP LOANS

4.1. Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted LIBOR Rate determined for such Interest Period plus the Applicable Margin in effect for such day.

(b) Each ABR Loan shall bear interest for each day that it is outstanding at a rate per annum equal to the Alternate Base Rate in effect for such day plus the Applicable Margin in effect for such day.

(c) Upon the occurrence and during the continuance of an Event of Default, all principal, interest, fees and other amounts outstanding under the DIP Loan Documents, accruing pursuant to the terms of the DIP Loan Documents or otherwise payable pursuant to the terms of the DIP Loan Documents shall bear interest at a rate per annum which is (x) in the case of principal, the rate that would otherwise be applicable thereto pursuant to the relevant foregoing provisions of this Subsection 4.1, plus 3.00%, (y) in the case of interest, the rate that would be otherwise applicable to principal of the related DIP Loan pursuant to the relevant foregoing provisions of this Subsection 4.1 (other than clause (x) above) plus 3.00% and (z) in the case of fees and other amounts, the rate described in clause (b) of this Subsection 4.1 for ABR Loans accruing interest at the Alternate Base Rate plus 3.00%, in each case from the date

of such Event of Default until such Event of Default ceases to exist (as well after as before judgment), which default interest shall be payable on demand.

(d) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to clause (c) of this Subsection 4.1 shall be payable from time to time on demand.

(e) Notwithstanding anything to the contrary contained in any DIP Loan Document, the interest paid or agreed to be paid under the DIP Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the DIP Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the DIP Facility Obligations hereunder.

4.2. Conversion and Continuation Options. (a) Subject to its obligations pursuant to Subsection 4.12(c), the Borrower may elect from time to time to convert outstanding DIP Loans from Eurodollar Loans to ABR Loans by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time three Business Days prior to such election. The Borrower may elect from time to time to convert outstanding DIP Loans from ABR Loans to Eurodollar Loans, by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time at least three Business Days prior to such election.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving the Administrative Agent irrevocable notice of such continuation prior to 11:00 A.M., New York City time three Business Days prior to such continuation, including the length of the next Interest Period to be applicable to such Eurodollar Loan, determined in accordance with the applicable provisions of the term "Interest Period" set forth in Subsection 1.1.

(c) If the Borrower wishes to request Eurodollar Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them.

(d) Each notice delivered by the Borrower pursuant to clause (a) or clause (b) above shall be in the form of a Committed Loan Notice specify (i) whether the Borrower is requesting a conversion of DIP Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of DIP Loans to be converted or continued, (iv) the

Type of DIP Loans to be borrowed or to which existing DIP Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of DIP Loan in such notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable DIP Loans shall be made as, or converted to ABR Loans. Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a conversion to, or continuation of Eurodollar Loans in any such notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(e) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its pro rata share, and if no timely notice of a borrowing, conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans described in Subsection 4.2(d). In the case of a Borrowing, each affected Lender shall make the amount of its DIP Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction of the applicable conditions set forth in Subsection 6.2 (and, if such borrowing is the initial Extension of Credit, Subsection 6.1) and receipt of all requested DIP Loans from Lenders by Administrative Agent, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(f) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan. During the existence of a Default, no DIP Loans may be requested as, converted to or continued as Eurodollar Loans without the consent of the Required Lenders.

(g) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the prime rate used in determining the Alternate Base Rate promptly following such change.

4.3. Minimum Amounts; Maximum Sets. All borrowings, conversions and continuations of DIP Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Set shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and so that there shall not be more than five Sets at any one time outstanding.

4.4. Optional and Mandatory Prepayments. (a) The Borrower may at any time and from time to time prepay the DIP Loans made to it, in whole or in part, subject to Subsection 4.12, without premium or penalty (except as set forth in Subsection 4.5(b) below), upon written notice by the Borrower to the Administrative Agent prior to 1:00 P.M., New York City time three Business Days prior to the date of prepayment (in the case of Eurodollar Loans), or prior to

1:00 P.M., New York City time at least one Business Day prior to the date of prepayment (in the case of ABR Loans). Such notice shall specify, in the case of any prepayment of DIP Loans, the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or ABR Loans or a combination thereof, and, in each case if a combination thereof, the principal amount allocable to each. Any such notice may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Upon the receipt of any such notice the Administrative Agent shall promptly notify each affected Lender thereof. If any such notice is given and not revoked, the amount specified in such notice shall be due and payable on the date specified therein, together with (if a Eurodollar Loan is prepaid other than at the end of the Interest Period applicable thereto) any accrued and unpaid interest on the DIP Loans being repaid and amounts payable pursuant to Subsection 4.12. Any prepayment of Eurodollar Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and any prepayment of ABR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding.

(b) (i) The Borrower shall, in accordance with Subsection 4.4(c), prepay the DIP Loans to the extent required by Subsection 4.4(f), (ii) if on or after the Closing Date, the Borrower or any of its Subsidiaries shall Incur Indebtedness for borrowed money (excluding Indebtedness permitted pursuant to Subsection 8.1), the Borrower shall, in accordance with Subsection 4.4(c), prepay the DIP Loans in an amount equal to 100.0% of the Net Cash Proceeds thereof with such prepayment to be made on or before the fifth Business Day following notice given to each Lender of the Prepayment Date, as contemplated by Subsection 4.4(d), and (iii) promptly upon receipt by any Loan Party or any of its Subsidiaries of cash proceeds from any Extraordinary Receipt, the Borrower shall prepay the DIP Loans in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds of such Extraordinary Receipt (such prepayment to be applied as set forth in clause (c) below). Any prepayment pursuant to this Subsection 4.4(b) shall be accompanied by any accrued and unpaid interest on the DIP Loans being repaid and amounts payable pursuant to Subsection 4.12.

(c) Each prepayment of DIP Loans pursuant to Subsection 4.4(b) shall be allocated pro rata among the DIP Loans.

(d) The Borrower shall give notice to the Administrative Agent of any mandatory prepayment of the DIP Loans promptly (and in any event within five Business Days) upon becoming obligated to make such prepayment. Such notice shall state the date on which the Borrower is offering to make or will make such mandatory prepayment (the "Prepayment Date"). Once given, such notice shall be irrevocable and all amounts subject to such notice shall be due and payable on the Prepayment Date. Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall promptly give notice to each Lender of the prepayment and the Prepayment Date.

(e) Amounts prepaid on account of DIP Loans pursuant to Subsection 4.4(a) or (b) may not be reborrowed.

(f) In the event that on or after the Closing Date the Borrower or any Subsidiary shall make an Asset Disposition of DIP Collateral that is not permitted by Subsection 8.4, or a Recovery Event in respect of DIP Collateral shall occur, an amount equal to 100.0% of the Net Available Cash from such Asset Disposition or Recovery Event shall be applied by the Borrower (or any Subsidiary, as the case may be) as follows: (x) to the extent such Asset Disposition or Recovery Event is an Asset Disposition or Recovery Event of assets that constitute DIP Collateral (other than ABL Collateral), to prepay the DIP Loans in accordance with Subsection 4.4(b)(i) and (y) to the extent such Asset Disposition is an Asset Disposition of ABL Collateral or assets that do not constitute DIP Collateral, subject to the terms of the Orders, to prepay the DIP Loans in accordance with Subsection 4.4(b)(i); provided, however, that, so long as no Default or Event of Default has occurred and is continuing, Net Cash Proceeds from insurance or condemnation proceeds shall not be required to be applied to prepay the DIP Loans to the extent the Borrower delivers to the Administrative Agent a certificate stating that the Loan Parties intend to use such Net Cash Proceeds to acquire capital assets useful to the business of the Loan Parties within sixty (60) days of the receipt of such Net Cash Proceeds, it being expressly agreed that any Net Cash Proceeds not so reinvested shall be applied to prepay the DIP Loans immediately thereafter (such prepayment to be applied as set forth in clause (c) below).

4.5. Administrative Agent's Fee; Other Fees.

(a) The Borrower agrees to pay to the Administrative Agent the fees set forth in the Administrative Agency Fee Letter.

(b) In the event that the DIP Loans are repaid from the proceeds of any source other than the Exit Term Facility, the Borrower shall pay to the Lenders a prepayment premium equal to \$2,500,000, which shall be shared among the Lenders in accordance with their respective pro rata shares of the DIP Loan Commitment.

4.6. Computation of Interest and Fees.

(a) Interest (other than interest based on the Base Rate) shall be calculated on the basis of a 360-day year for the actual days elapsed; and interest based on the Base Rate shall be calculated on the basis of a 365 day year (or 366-day year, as the case may be) for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of each determination of an Adjusted LIBOR Rate. Any change in the interest rate on a DIP Loan resulting from a change in the Alternate Base Rate or the Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of the effective date and the amount of each such change in interest rate. Interest shall accrue on each DIP Loan for the day on which the DIP Loan is made, and shall not accrue on any DIP Loan, or any portion thereof, for the day on which the DIP Loan or such portion is paid, provided that any DIP Loan that is repaid on the same day on which it is made shall, subject to Subsection 4.8(a), bear interest for one day.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding for all purposes, absent manifest error. The Administrative Agent shall, at the request of the Borrower or any Lender, deliver to the Borrower or such Lender a statement showing in reasonable detail the

calculations used by the Administrative Agent in determining any interest rate pursuant to Subsection 4.1, excluding any LIBOR Rate which is based upon the Reuters Monitor Money Rates Service page and any ABR Loan which is based upon the Alternate Base Rate.

4.7. Inability to Determine Interest Rate. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, (ii) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to any Eurodollar Loan or (iii) the LIBOR Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such DIP Loan, the Administrative Agent will so notify the Borrower and each Lender as soon as practicable thereafter. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Adjusted LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans in the amount specified therein.

4.8. Pro Rata Treatment and Payments. (a) Except as expressly otherwise provided herein, each payment (including each prepayment, but excluding payments made pursuant to Subsections 4.9, 4.10, 4.11, 4.12, 4.13(d), 11.1(g) or 11.6) by the Borrower on account of principal of and interest on any DIP Loans (other than any payments pursuant to Subsection 4.4(b)) shall be allocated by the Administrative Agent pro rata according to the respective outstanding principal amounts of such DIP Loans then held by the respective Lenders. All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made on or prior to the time expressly required hereunder or under such other DIP Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 P.M., New York City time), on the due date thereof to the Administrative Agent for the account of the Lenders holding the relevant DIP Loans, the Lenders or the Administrative Agent, as the case may be, at the Administrative Agent's Office in Dollars in immediately available funds. Payments received by the Administrative Agent after such time may be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall promptly distribute such payments to such Lenders if any such payment is received prior to 2:00 P.M., New York City time, on a Business Day, in like funds as received prior to the end of such Business Day and otherwise the Administrative Agent shall distribute such payment to such Lenders on the next succeeding Business Day. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity of such payment shall

be extended to the next succeeding Business Day (and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension) unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower in respect of such borrowing a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, then such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand, such corresponding amount in immediately available funds with interest thereon, for each day and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of payment to be made by the Borrower, the interest rate applicable to ABR loans. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's DIP Loan included in such Borrowing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Subsection 4.8(b) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's DIP Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any DIP Loan to be made by such Lender as provided in the foregoing provisions of this Section 4, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Extension of Credit set forth in Section 6 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender without interest.

(e) The obligations of the Lenders hereunder to make DIP Loans and to make payments pursuant to Subsection 10.7(a) are several and not joint. The failure of any Lender to make any DIP Loan or to make any payment under Subsection 10.7(a) 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 DIP Loan or to make its payment under Subsection 10.7(a).

4.9. Illegality.

If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund DIP Loans whose interest is determined by reference to the Adjusted LIBOR Rate (“Affected Loans”), or to determine or charge interest rates based upon the Adjusted LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Alternative Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

4.10. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof applicable to any Lender, or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case made subsequent to the Closing Date (or, if later, the date on which such Lender becomes a Lender):

(i) shall subject such Lender to any Tax of any kind whatsoever with respect to any Eurodollar Loans made or maintained by it or its obligation to make or maintain Eurodollar Loans, or change the basis of taxation of payments to such Lender in respect thereof, in each case, except for Non-Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any DIP Loan Document, Taxes imposed by FATCA and Taxes measured by or imposed upon net income, or franchise Taxes, or Taxes measured by or imposed upon overall capital or net worth, or branch Taxes (in the case of such capital, net worth or branch Taxes, imposed in lieu of such net income Tax), of such Lender or its applicable lending office, branch, or any affiliate thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender which is not otherwise included in the determination of the LIBOR Rate hereunder; or

(iii) shall impose on such Lender any other condition (excluding any Tax of any kind whatsoever);

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Borrower from such Lender, through the Administrative Agent in accordance herewith, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable with respect to such Eurodollar Loans; provided that, in any such case, the Borrower may elect to convert the Eurodollar Loans made by such Lender hereunder to ABR Loans by giving the Administrative Agent at least one Business Day's notice of such election, in which case the Borrower shall promptly pay to such Lender, upon demand, without duplication, amounts theretofore required to be paid to such Lender pursuant to this Subsection 4.10(a) and such amounts, if any, as may be required pursuant to Subsection 4.12. If any Lender becomes entitled to claim any additional amounts pursuant to this Subsection 4.10(a), it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any additional amounts payable

pursuant to this Subsection 4.10(a) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the DIP Loans and all other amounts payable hereunder.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) from any Governmental Authority, in each case, made subsequent to the Closing Date, does or shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, within ten Business Days after submission by such Lender to the Borrower (through the Administrative Agent) of a written request therefor certifying (x) that one of the events described in this clause (b) has occurred and describing in reasonable detail the nature of such event, (y) as to the reduction of the rate of return on capital resulting from such event and (z) as to the additional amount or amounts demanded by such Lender or corporation and a reasonably detailed explanation of the calculation thereof, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or corporation for such reduction. Such a certificate as to any additional amounts payable pursuant to this Subsection 4.10(b) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the DIP Loans and all other amounts payable hereunder.

(c) Notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, regulations, guidelines and directives promulgated thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, in each case, shall be deemed to have been enacted, adopted, promulgated or issued, as applicable, subsequent to the Closing Date for all purposes herein.

4.11. Taxes.

(a) Except as provided below in this Subsection 4.11 or as required by law, all payments made by the Borrower or the Agents under this Agreement and any Notes shall be made free and clear of, and without deduction or withholding for or on account of any Taxes; provided that if any Non-Excluded Taxes are required to be withheld from any amounts payable by the Borrower to any Agent or any Lender hereunder or under any Notes, the amounts so payable by the Borrower shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrower shall be entitled to deduct and withhold, and the Borrower shall not be required to

indemnify for any Non-Excluded Taxes, and any such amounts payable by the Borrower to or for the account of any Agent or Lender, shall not be increased (x) if such Agent or Lender fails to comply with the requirements of clause (b) unless such failure to comply is attributable to a Change in Law (as defined below) occurring after the date on which Agent or such Lender became a party to this Agreement, or clause (c) of this Subsection 4.11 or with the requirements of Subsection 4.13, or (y) with respect to any Non-Excluded Taxes imposed in connection with the payment of any fees paid under this Agreement unless such Non-Excluded Taxes are imposed as a result of a Change in Law, or (z) with respect to any Non-Excluded Taxes imposed by the United States or any state or political subdivision thereof, unless such Non-Excluded Taxes are imposed as a result of a change in treaty, law or regulation that occurred after such Agent became an Agent hereunder or such Lender became a Lender hereunder (or, if such Agent or Lender is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes, after the relevant beneficiary or member of such Agent or Lender became such a beneficiary or member, if later) (any such change, at such time, a “Change in Law”). Whenever any Non-Excluded Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for its own account or for the account of the respective Lender or Agent, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes when due to the appropriate Governmental Authority in accordance with applicable law or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent, the Lenders and the Agents for any incremental Taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure. The agreements in this Subsection 4.11 shall survive the termination of this Agreement and the payment of the DIP Loans and all other amounts payable hereunder.

(b) Each Agent and each Lender that is not a United States Person shall:

(i) (1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent (A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that it is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country) or Form W-8ECI, or successor applicable form, as the case may be, in each case certifying that it is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal income taxes, and (B) such other forms, documentation or certifications, as the case may be, certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such form or certification provided in Subsection 4.11(b)(i)(1) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower;

(3) [Reserved;] and

(4) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (4) such Lender shall be entitled to consider the cost (to the extent unreimbursed by any Loan Party) which would be imposed on such Lender of complying with such request; or

(ii) in the case of any such Lender that is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code and is claiming the so-called “portfolio interest exemption”,

(1) [Reserved;]

(2) deliver to the Borrower on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Lender, with a copy to the Administrative Agent, (A) two certificates (any such certificate a “U.S. Tax Compliance Certificate”) substantially in the form of Exhibit D-1 hereto to the effect that it is not (i) a bank within the meaning of Section 881(c)(3)(A) of the Code, (ii) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (iii) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or successor applicable form and (C) such other forms, documentation or certifications, as the case may be certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes (and shall also deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of such form or certificate on or before the date it expires or becomes obsolete and after the occurrence of any event requiring a change in the most recently provided form or certificate); and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower)

which would be imposed on such Lender of complying with such request;
or

(iii) in the case of any such Agent or Lender that is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes,

(1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent two accurate and complete original signed copies of Internal Revenue Service Form W-8IMY and, if such Lender is treated as a partnership for U.S. federal income tax purposes and if any direct or indirect partner of such Lender is claiming the so-called “portfolio interest exemption”, represent to the Borrower and the Administrative Agent that such Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code; and

(A) if applicable, with respect to each beneficial owner or partner of such Agent or Lender that is not claiming the so-called “portfolio interest exemption”, also deliver to the Borrower and the Administrative Agent (I) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that such beneficial owner or partner is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country), Form W-8ECI or Form W-9, or successor applicable form, as the case may be, in each case so that each such beneficial owner or partner is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal income taxes and (II) such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to all payments under this Agreement and any Notes; and

(B) if applicable, with respect to each beneficial owner or partner of such Lender that is claiming the so-called “portfolio interest exemption”, (I) deliver to the Borrower and the Administrative Agent two U.S. Tax Compliance Certificates substantially in the form of Exhibit D-2 from each beneficial owner or partner to the effect that such beneficial owner or partner is not (1) a bank within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN, or successor applicable form, from each such beneficial owner or partner, provided that if such Agent or Lender is a partnership, such Agent or Lender may

provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-3 on behalf of each such direct and indirect partner, and (II) also deliver to Borrower and the Administrative Agent such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such forms, certificates or certifications referred to above on or before the date any such form, certificate or certification expires or becomes obsolete, or any beneficial owner or partner changes, and after the occurrence of any event requiring a change in the most recently provided form, certificate or certification; and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such beneficial owner or partner to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Agent or Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower) which would be imposed on such Agent or Lender (or beneficial owner or partner) of complying with such request;

unless in any such case there has been a Change in Law which renders all such forms inapplicable or which would prevent such Agent or such Lender (or such beneficial owner or partner) from duly completing and delivering any such form with respect to it and such Agent or such Lender so advises the Borrower and the Administrative Agent.

(c) Each Lender and each Agent, in each case that is a United States Person shall on or before the date of any payment by the Borrower under this Agreement or any Notes to such Lender or Agent, deliver to the Borrower and the Administrative Agent two duly completed copies of Internal Revenue Service Form W-9, or successor form, certifying that such Lender or Agent is a United States Person and that such Lender or Agent is entitled to complete exemption from United States backup withholding tax.

(d) Notwithstanding the foregoing, if the Administrative Agent is not a United States Person, on or before the date of any payment by the Borrower under this Agreement or any Notes to the Administrative Agent, the Administrative Agent shall:

(i) deliver to the Borrower (A) two duly completed copies of Internal Revenue Service Form W-8ECI, or successor applicable form, with respect to any amounts payable to the Administrative Agent for its own account, (B) two duly completed copies of Internal Revenue Service Form W-8IMY, or successor applicable form, with respect to any amounts payable to the Administrative Agent

for the account of others, certifying that it is a “U.S. branch” and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. person with respect to such payments as contemplated by U.S. Treasury Regulation § 1.1441-1(b)(2)(iv)) or (C) such other forms or certifications as may be sufficient under applicable law to establish that the Administrative Agent is entitled to receive any payment by the Borrower under this Agreement or any Notes (whether for its own account or for the account of others) without deduction or withholding of any United States federal income taxes; and

(ii) deliver, to the extent legally entitled to do so, to the Borrower two further copies of any such form or certification provided in Subsection 4.11(d)(i) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower.

(e) If a payment made to a Lender under any DIP Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, such Lender shall deliver to the Administrative Agent and the Borrower, at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Agent or the Borrower, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Administrative Agent or the Borrower as may be necessary for the Administrative Agent and the Borrower to comply with their respective obligations (including any applicable reporting requirements) under FATCA, to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Subsection 4.11(e), FATCA shall include any amendments made to FATCA after the date of this Agreement. For the avoidance of doubt, the Borrower and the Administrative Agent shall be permitted to withhold any Taxes imposed by FATCA.

4.12. Indemnity.

The Borrower agrees to indemnify each Lender in respect of Extensions of Credit made, or requested to be made, to the Borrower, and to hold each such Lender harmless from any loss or expense which such Lender may sustain or incur (other than through such Lender’s bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable decision) as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment or conversion of Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a payment or prepayment of Eurodollar Loans or the continuation or conversion of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto, (d) the revocation of a redemption notice in respect of Eurodollar Loans delivered by the Borrower in

accordance with the provisions of Subsections 4.4(a) or (e) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Subsections 4.13(d) and 11.1(g). Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or converted, or not so borrowed, converted or continued, for the period from the date of such prepayment or conversion or of such failure to borrow, convert or continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market plus (iii) any fees payable to terminate such deposits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. If any Lender becomes entitled to claim any amounts under the indemnity contained in this Subsection 4.12, it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in clause (a), (b), (c), (d) or (e) has occurred and describing in reasonable detail the nature of such event, (y) as to the loss or expense sustained or incurred by such Lender as a consequence thereof and (z) as to the amount for which such Lender seeks indemnification hereunder and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any indemnification pursuant to this Subsection 4.12 submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within five Business Days after receipt thereof. This covenant shall survive the termination of this Agreement and the payment of the DIP Loans and all other amounts payable hereunder.

4.13. Certain Rules Relating to the Payment of Additional Amounts.

(a) Upon the request, and at the expense of the Borrower, each Lender and Agent to which the Borrower is required to pay any additional amount pursuant to Subsection 4.10 or 4.11, and any Participant in respect of whose participation such payment is required, shall reasonably afford the Borrower the opportunity to contest, and reasonably cooperate with the Borrower in contesting, the imposition of any Non-Excluded Tax giving rise to such payment; provided that (i) such Lender or Agent shall not be required to afford the Borrower the opportunity to so contest unless the Borrower shall have confirmed in writing to such Lender or Agent its obligation to pay such amounts pursuant to this Agreement and (ii) the Borrower shall reimburse such Lender or Agent for its reasonable and documented out-of-pocket attorneys' and accountants' fees and disbursements incurred in so cooperating with the Borrower in contesting the imposition of such Non-Excluded Tax; provided, however, that notwithstanding the foregoing no Lender or Agent shall be required to afford the Borrower the opportunity to contest, or cooperate with the Borrower in contesting, the imposition of any Non-Excluded Taxes, if such Lender or Agent in its sole discretion in good faith determines that to do so would have an adverse effect on it.

(b) If a Lender changes its applicable lending office (other than (i) pursuant to clause (c) below or (ii) after an Event of Default under Subsection 9.1(a) or (f) has occurred and

is continuing) and the effect of such change, as of the date of such change, would be to cause the Borrower to become obligated to pay any additional amount under Subsection 4.10 or 4.11, the Borrower shall not be obligated to pay such additional amount.

(c) If a condition or an event occurs which would, or would upon the passage of time or giving of notice, result in the payment of any additional amount to any Lender or Agent by the Borrower pursuant to Subsection 4.10 or 4.11 or result in Affected Loans or commitments to make Affected Loans being automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, pursuant to Subsection 4.9, such Lender or Agent shall promptly notify the Borrower and the Administrative Agent and shall take such steps as may reasonably be available to it to mitigate the effects of such condition or event (which shall include efforts to rebook the DIP Loans held by such Lender at another lending office, or through another branch or an affiliate, of such Lender); provided that such Lender or Agent shall not be required to take any step that, in its reasonable judgment, would be materially disadvantageous to its business or operations or would require it to incur additional costs (unless the Borrower agrees to reimburse such Lender or Agent for the reasonable incremental out-of-pocket costs thereof).

(d) If the Borrower shall become obligated to pay additional amounts pursuant to Subsection 4.10 or 4.11 and any affected Lender shall not have promptly taken steps necessary to avoid the need for payments under Subsection 4.10 or 4.11 or if Affected Loans or commitments to make Affected Loans are automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, under Subsection 4.9 and any affected Lender shall not have promptly taken steps necessary to avoid the need for such conversion under Subsection 4.9, the Borrower shall have the right, for so long as such obligation remains, (i) with the assistance of the Administrative Agent to seek one or more substitute Lenders reasonably satisfactory to the Administrative Agent and the Borrower to purchase the affected DIP Loan, in whole or in part, at an aggregate price no less than such DIP Loan's principal amount plus accrued interest, and assume the affected obligations under this Agreement, or (ii) so long as no Event of Default under Subsection 9.1(a) or (f) then exists or will exist immediately after giving effect to the respective prepayment, upon notice to the Administrative Agent to prepay the affected DIP Loan, in whole or in part, subject to Subsection 4.12, without premium or penalty. In the case of the substitution of a Lender, then, the Borrower, the Administrative Agent, the affected Lender, and any substitute Lender shall execute and deliver an appropriately completed Assignment and Acceptance pursuant to Subsection 11.6(b) to effect the assignment of rights to, and the assumption of obligations by, the substitute Lender; provided that any fees required to be paid by Subsection 11.6(b) in connection with such assignment shall be paid by the Borrower or the substitute Lender. In the case of a prepayment of an affected DIP Loan, the amount specified in the notice shall be due and payable on the date specified therein, together with any accrued interest to such date on the amount prepaid. In the case of each of the substitution of a Lender and of the prepayment of an affected DIP Loan, the Borrower shall first pay the affected Lender any additional amounts owing under Subsections 4.10 and 4.11 (as well as any commitment fees and other amounts then due and owing to such Lender, including any amounts under this Subsection 4.13) prior to such substitution or prepayment. In the case of the substitution of a Lender pursuant to this Subsection 4.13(d), if the Lender being replaced does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of

(a) the date on which the assignee Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to such replaced Lender relating to the DIP Loans and participations so assigned shall be paid in full by the assignee Lender and/or the Borrower to such Lender being replaced, then the Lender being replaced shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Lender.

(e) If any Agent or any Lender receives a refund directly attributable to Taxes for which the Borrower has made additional payments pursuant to Subsection 4.10(a) or 4.11(a), such Agent or such Lender, as the case may be, shall promptly pay such refund (together with any interest with respect thereto received from the relevant taxing authority, but net of any reasonable cost incurred in connection therewith) to the Borrower; provided, however, that the Borrower agrees promptly to return such refund (together with any interest with respect thereto due to the relevant taxing authority) (free of all Non-Excluded Taxes) to such Agent or the applicable Lender, as the case may be, upon receipt of a notice that such refund is required to be repaid to the relevant taxing authority.

(f) The obligations of any Agent, Lender or Participant under this Subsection 4.13 shall survive the termination of this Agreement and the payment of the DIP Loans and all amounts payable hereunder.

4.14. Super Priority Nature of Obligations and Lenders' DIP Liens.

(a) The priority of Lenders' DIP Liens on the DIP Collateral owned by the Loan Parties shall be set forth in the Interim Order and the Final Order.

(b) Subject to the Carve-Out, all DIP Facility Obligations shall constitute administrative expenses of the Borrower and the Guarantors in the Chapter 11 Cases pursuant to Section 364(c) of the Bankruptcy Code with priority over all other claims and administrative expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code, and shall at all times during the period that the DIP Loans remain outstanding, remain senior in priority to all other claims or administrative expenses (other than the Carve-Out) (the "DIP Superpriority Claim"); provided that an amount of the ABL DIP Superpriority Claim equal to the Incremental ABL DIP Amount shall, at all times during the period that the ABL DIP Loans remain outstanding, rank pari passu with the DIP Superpriority Claim.

(c) The DIP Liens granted to the Collateral Agent for the benefit of the Lenders on the DIP Collateral owned by the Borrower and the Guarantors shall be valid and perfected on the basis and with the priority set forth in the definition of "DIP Lien" herein and in the Orders.

(d) [Reserved].

(e) The "Carve-Out" means an amount equal to the sum of the following (A) one-half (1/2) of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the

Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (iii) to the extent allowed by the Bankruptcy Court at any time, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Loan Parties (other than the Investment Banker) (subject to the Budget) and the Committee at any time before or on the date and time of the delivery by the Administrative Agent at the direction of the Required Lenders of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; plus (B) to the extent allowed by the Bankruptcy Court at any time, all accrued and unpaid fees, disbursements, costs and expenses by the Investment Banker (subject to the Budget, and in no event in excess of \$500,000 plus any expense reimbursement owed to the Investment Banker (in each case pursuant to the Lazard Engagement Letter) less any amounts paid to the Investment Banker prior to the Petition Date pursuant to the Lazard Engagement Letter, unless the Administrative Agent and the Required Lenders have consented in writing to the payment of any amounts in excess thereof) at any time before or on the date and time of delivery by the Administrative Agent at the direction of the Required Lenders of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; plus (C) after the date and time of the delivery by the Administrative Agent at the direction of the Required Lenders of the Carve-Out Trigger Notice, to the extent allowed by the Bankruptcy Court at any time, all unpaid fees, disbursements, costs and expenses incurred by Case Professionals in an aggregate amount not to exceed \$75,000 (the amount set forth in this clause (C) being the “Post-Carve-Out Trigger Notice Cap”). To the extent that any payment to a Case Professional is subsequently disallowed and/or disgorged, the proceeds of any claim against the Case Professional for amounts so disallowed or disgorged shall constitute DIP Collateral and as such, shall be subject to the liens and claims granted hereunder; provided that, except as otherwise provided in the Interim Order or the Final Order (including, without limitation, investigation rights), no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge, contest or litigation as to the amount, extent, priority, validity, perfection or enforcement of the indebtedness of the Borrower owing to the Lenders, Administrative Agent, Collateral Agent or indemnified parties under the DIP Loan Documents or the Pre-Petition Term Obligations or to the collateral securing the DIP Facility Obligations or the Pre-Petition Term Obligations, the ABL DIP Agent, the ABL DIP Lenders, the Senior ABL Facility Agent or the Senior ABL Facility Lenders. Prior to the occurrence of an Event of Default, the Loan Parties shall be permitted to pay compensation and reimbursement of fees and expenses that are authorized to be paid under Sections 328, 330, 331 or 363 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court, as the same may be due and payable, and such payments shall not reduce the Carve-Out. The foregoing shall not be construed as a consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Administrative Agent and the Lenders to Object to the allowance and payment of such amounts. Upon the receipt of the Carve-Out Trigger Notice, the right of the Loan Parties to pay professional fees outside the Carve-Out shall terminate, and the Loan Parties shall provide immediate notice to all professionals informing them that such notice was delivered and further advising them that the Loan Parties’ ability to pay such professionals is subject to and limited by the Carve-Out.

(f) Except as set forth herein or in the Orders, no other claim having a priority superior or *pari passu* to that granted to Administrative Agent, Collateral Agent and Lenders by

the Final Order shall be granted or approved while any Obligations under this Agreement remain outstanding. Except for the Carve-Out and subject to entry of the Final Order, no costs or expenses of administration shall be imposed against the Administrative Agent, Collateral Agent, Lenders or any of the DIP Collateral or any of the Pre-Petition Term Agent, the Pre-Petition Term Lenders or the Collateral (as defined in each of the Pre-Petition Term Facility Agreements) under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and each of the Loan Parties hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under sections 105, 506(c) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Administrative Agent, Collateral Agent, Lenders or any of the DIP Collateral or any of the Pre-Petition Term Agent or the Pre-Petition Term Lenders.

4.15. Payment of Obligations.

Upon the maturity (whether by acceleration or otherwise) of any of the DIP Facility Obligations under this Agreement or any of the other DIP Loan Documents, Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

4.16. No Discharge; Survival of Claims.

Until payment in full of the DIP Loans and all other DIP Facility Obligations, each of the Borrower and the Guarantors agrees that (a) the DIP Facility Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the DIP Superpriority Claim and the DIP Liens granted to the Agents pursuant to the Orders and described in this Subsection 4.16 shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case.

4.17. Release.

Each of the Borrower and the Guarantors hereby acknowledges effective upon entry of the Final Order, and subject to the terms thereof, that the Borrower, the Guarantors and any of their Subsidiaries have no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Borrower's, the Guarantors' or their Subsidiaries' liability to repay the Administrative Agent, Collateral Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Administrative Agent, Collateral Agent or any Lender. The Borrower and the Guarantors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the "Releasing Parties"), hereby fully, finally and forever release and discharge the Administrative Agent, the Collateral Agent and Lenders and all of Administrative Agent's, Collateral Agent's and Lenders' past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in

settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order, the Final Order, the Related Agreements and the transactions (including, for avoidance of doubt, the Related Transactions) contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.

4.18. Waiver of any Priming Rights.

On and after the Closing Date, and on behalf of themselves and their estates, and for so long as any DIP Facility Obligations shall be outstanding, the Borrower and the Guarantors hereby irrevocably waive any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the DIP Liens securing the DIP Facility Obligations, or to approve a claim of equal or greater priority than the DIP Facility Obligations, in each case other than as contemplated by the ABL DIP Facility Documents.

SECTION 5

REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and each Lender to make the Extensions of Credit requested to be made by it on the Closing Date and on each Borrowing Date thereafter, the Borrower with respect to itself and its Subsidiaries, hereby represents and warrants, on the Closing Date, in each case after giving effect to the Transactions, and on every Borrowing Date thereafter to the Administrative Agent and each Lender that:

5.1. Financial Condition.

(a) (i) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2013 and the related consolidated statements of operations, equity and cash flows for the Fiscal Year ended December 31, 2013, reported on by and accompanied by unqualified reports from KPMG LLP, and (ii) the unaudited consolidated balance sheets of the Borrower and its Subsidiaries and the related consolidated statements of operations, equity and cash flows for the fiscal quarters ended June 30, 2014, September 30, 2014 and December 31, 2014 present fairly, in all material respects, the consolidated financial condition as at such dates, and the consolidated statements of operations and consolidated cash flows for the respective periods then ended, of the Borrower and its Subsidiaries. All such

financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby (except as approved by a Responsible Officer, and disclosed in any such schedules and notes). During the period from December 31, 2013 to and including the Closing Date, there has been no sale, transfer or other disposition by the Borrower and its Subsidiaries of any material part of its business or property and no purchase or other acquisition by the Borrower and its Subsidiaries of any business or property (including any Capital Stock of any other Person) which in either case is material in relation to the consolidated financial condition of the Borrower and its Subsidiaries, taken as a whole, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(b) As of the Closing Date, except as set forth in the financial statements referred to in Subsection 5.1(a) and except with respect to the Specified Events of Default, there are no liabilities of any Loan Party of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which would reasonably be expected to result in liabilities in excess of \$250,000 or in a Material Adverse Effect.

(c) The Initial Budget delivered pursuant to Subsection 6.1(a)(ii) and each Budget delivered thereafter are based on good faith estimates and assumptions believed by management of the Borrower to be reasonable and fair in light of current conditions and facts known to the Borrower at the time delivered (it being understood that such Budgets and the assumptions on which they were based, may or may not prove to be correct).

5.2. Dividends. Since December 31, 2013, except as otherwise permitted under this Agreement or the Pre-Petition Term Facility Agreements no dividends or other distributions have been declared, paid or made upon the Capital Stock of the Borrower, nor has any of the Capital Stock of the Borrower been redeemed, retired, purchased or otherwise acquired for value by the Borrower or any of its Subsidiaries.

5.3. Corporate Existence; Compliance with Law.

Each of the Loan Parties (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the legal right to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, except to the extent that the failure to have such legal right would not be reasonably expected to have a Material Adverse Effect, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing would not be reasonably expected to have a Material Adverse Effect and (d) subject to the entry of the Interim Order and the Final Order, as applicable, is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

5.4. Corporate Power; Authorization; Enforceable Obligations.

Subject to the entry by the Bankruptcy Court of the Interim Order, each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the DIP Loan Documents to which it is a party and, in the case of the Borrower, to obtain Extensions of Credit hereunder, and each such Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the DIP Loan Documents to which it is a party and, in the case of the Borrower, to authorize the Extensions of Credit to it, if any, on the terms and conditions of this Agreement and any Notes. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be obtained or made by or on behalf of any Loan Party in connection with the execution, delivery, performance, validity or enforceability of the DIP Loan Documents to which it is a party or, in the case of the Borrower, with the Extensions of Credit to it, if any, hereunder, except for (a) consents, authorizations, notices and filings that have been obtained or made prior to the Closing Date, (b) filings to perfect the DIP Liens created by the Security Documents, and (c) the Interim Order and the Final Order, as applicable. Subject to the Orders, this Agreement has been duly executed and delivered by the Borrower, and each other DIP Loan Document to which any Loan Party is a party will be duly executed and delivered on behalf of such Loan Party. This Agreement constitutes a legal, valid and binding obligation of the Borrower and each other DIP Loan Document to which any Loan Party is a party when executed and delivered will constitute a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, in each case except as enforceability may be limited by applicable domestic or foreign bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.5. No Legal Bar.

Subject to the entry of the Interim Order and the Final Order, as applicable, the execution, delivery and performance of the DIP Loan Documents by any of the Loan Parties, the Extensions of Credit hereunder and the use of the proceeds thereof (a) will not violate any Requirement of Law or Contractual Obligation of such Loan Party in any respect that would reasonably be expected to result in any liability or loss except to the extent that any such violation could not reasonably be expected to be adverse to the Lenders in any material respect, (b) will not result in, or require the creation or imposition of any Lien (other than DIP Liens securing the DIP Facility Obligations or Permitted Liens) on any of its properties or revenues pursuant to any such Requirement of Law or Contractual Obligation and (c) will not violate any provision of the Organizational Documents of such Loan Party or any of the Subsidiaries in any respect.

5.6. No Material Litigation.

No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Borrower or any of its Subsidiaries or against any of their respective properties or revenues, (a) other than the Chapter 11 Cases, or as stayed upon the commencement of the

Chapter 11 Cases or (b) except as described on Schedule 5.6, which is so pending or threatened at any time on or prior to the Closing Date and relates to any of the DIP Loan Documents or any of the transactions contemplated hereby.

5.7. No Default.

Other than with respect to the Specified Events of Default and as a result of or in connection with the Chapter 11 Cases, neither the Borrower nor any of its Subsidiaries is in default under or with respect to any of its material Contractual Obligations including, without limitation, the Pre-Petition Term Facilities and the Senior ABL Facility.

5.8. Ownership of Property; Liens.

Each of the Borrower and its Subsidiaries has good title in fee simple to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material property, except those for which the failure to have such good title or such leasehold interest would not be reasonably expected to have a Material Adverse Effect, and none of such real or other property is subject to any Lien, except for Permitted Liens. Schedule 5.8 sets forth all Mortgaged Fee Properties as of the Closing Date.

5.9. Intellectual Property.

All registered patents, patent applications, trademarks, trademark applications, service marks, service mark applications, copyrights, copyright applications and tradenames owned or utilized by each Loan Party as of the Closing Date are set forth on Schedule 5.9(a) (as such Schedule 5.9(a) may be updated at any time upon written notice to Agent to reflect any such Intellectual Property (as defined below) acquired after the Closing Date). The Borrower and each of its Subsidiaries owns, or has the legal right to use, all United States and foreign patents, patent applications, trademarks, trademark applications, trade names, copyrights, technology, know-how and processes necessary for each of them to conduct its business as currently conducted (the "Intellectual Property"). Except as provided on Schedule 5.9(b), no claim has been asserted and is pending by any Person against the Borrower or any of its Subsidiaries challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any such claim, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements which in the aggregate would not reasonably be expected to be materially adverse to the Lenders.

5.10. Taxes.

(1) Each of the Borrower and its Subsidiaries has filed or caused to be filed all material tax returns which are required to be filed by it and except for the Taxes referred to in subsection (2)(i) and 2(ii) hereof, has paid (a) all taxes that are due and payable (other than assessments, fees and other charges which in the aggregate do not exceed \$200,000) shown to be due and payable on such returns and (b) all Taxes shown to be due and payable on any assessments of which it has received notice made against it or any of its property (including the Mortgaged Fee Properties) and all other Taxes imposed on it or any of its property by any

Governmental Authority; and (2) no Tax Liens have been filed (except for Liens for Taxes not yet due and payable), and no claim is being asserted in writing, with respect to any such Taxes (in each case other than in respect of any such (i) Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or its Subsidiaries, as the case may be or (ii) Taxes owed to Liberty County, TX pursuant to one or more tax abatement or tax payment agreements).

5.11. Federal Regulations.

No part of the proceeds of any Extensions of Credit will be used for any purpose which violates the provisions of the Regulations of the Board, including without limitation, Regulation T, Regulation U or Regulation X of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, referred to in said Regulation U.

5.12. ERISA.

During the five year period prior to each date as of which this representation is made, or deemed made, with respect to any Plan, none of the following events or conditions, either individually or in the aggregate, has resulted or is reasonably likely to result in a Material Adverse Effect: (i) a Reportable Event; (ii) a failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) or the occurrence of an Underfunding; (iii) any noncompliance with the applicable provisions of ERISA or the Code or other applicable laws; (iv) a termination of or the institution of proceedings to terminate (other than in a standard termination pursuant to Section 4041(b) of ERISA), or the appointment of a trustee to administer or terminate, a Plan subject to Title IV of ERISA; (v) a Lien on the property of the Borrower or any Commonly Controlled Entity in favor of the PBGC or a Plan; (vi) a complete or partial withdrawal from any Multiemployer Plan by the Borrower or any Commonly Controlled Entity; (vii) the Reorganization or Insolvency of any Multiemployer Plan; or (viii) any transactions that resulted or could reasonably be expected to result in any liability to the Borrower or any Commonly Controlled Entity under Section 4069 of ERISA or Section 4212(c) of ERISA.

5.13. [Reserved].

5.14. Investment Company Act; Other Regulations.

The Borrower is not an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act. The Borrower is not subject to regulation under any federal or state statute or regulation (other than Regulation X of the Board) which limits its ability to incur Indebtedness as contemplated hereby.

5.15. Subsidiaries.

Schedule 5.15 sets forth all the Subsidiaries of the Borrower at the Closing Date, the jurisdiction of their organization and the direct or indirect ownership interest of the Borrower therein.

5.16. Purpose of DIP Loans.

The proceeds of DIP Loans shall be used by the Borrower only for the following purposes, in each case in accordance with and subject to the Budget and except as otherwise agreed by the Administrative Agent and the Required Lenders: (i) working capital and general corporate purposes of the Loan Parties, (ii) the costs of administration of the Chapter 11 Cases, including, without limitation, to pay transaction costs, fees and expenses incurred (a) in connection with the DIP Facility and (b) by the lenders and agents under the Senior ABL Facility Documents, the Pre-Petition Priming Term Facility Documents and the Pre-Petition Original Term Facility Documents in connection with the Chapter 11 Cases, in each case to the extent such costs, fees and expenses are reimbursable pursuant to the terms of the applicable loan documents; (iii) the repayment, in full, in cash of all outstanding principal, accrued but unpaid interest, and fees (including all legal and professional fees) and expenses under the Pre-Petition Priming Term Facility; and (iv) to the extent that any overadvances under the Senior ABL Facility on the commencement of the Chapter 11 Cases exceed \$5,000,000, the reduction of the outstanding amount of any such overadvances to \$5,000,000 (the "Permitted Overadvance").

5.17. Environmental Matters.

(a) Other than as disclosed on Schedule 5.17, the Borrower and its Subsidiaries are, and for the past five (5) years have been, in compliance in all material respects with all applicable Environmental Laws and Environmental Permits and believe they will be able to maintain compliance with Environmental Laws, including any reasonably foreseeable future requirements thereof.

(b) Borrower and its Subsidiaries have obtained all Environmental Permits necessary for its current operation to fully comply with all Environmental Laws and all such Environmental Permits are current and in full force and effect. No legal or administrative proceedings are pending nor threatened by any Governmental Authority to cancel, modify, or fail to renew any such Environmental Permits. Further, Borrower and its Subsidiaries reasonably expect to timely obtain without material expense all such Environmental Permits required for planned operations.

(c) Borrower and its Subsidiaries have not, within the past five (5) years, received written notice from any Governmental Authority or other Person that the Borrower and its Subsidiaries are subject to any pending claim (i) based upon any provision of any Environmental Law and arising out of any act or omission of the Borrower and its Subsidiaries, or any of its employees, agents or representatives or (ii) arising out of the ownership, use, control or operation by the Borrower and its Subsidiaries of any facility, site, area or property from which there was a Release or threatened Release of any Hazardous Substance.

(d) Neither Borrower and its Subsidiaries have Released any Hazardous Substances on, upon, into, to or from any currently owned, formerly owned, or leased real property, (i) in violation of any Environmental Laws; or (ii) which has given rise to any Environmental Costs of the Borrower and its Subsidiaries or remedial obligations pursuant to Environmental Laws; or (iii) which would interfere with the planned or continued operations of the Borrower and its Subsidiaries, or (iv) which would impair the fair saleable value of any real property owned by the Borrower or any of its Subsidiaries that is part of the DIP Collateral, and no Person has been exposed to Hazardous Substances in connection with the operation of the businesses of the Borrower and its Subsidiaries and the Borrower and its Subsidiaries have not in a manner that could reasonably be expected to form the basis of a claim under Environmental Laws.

(e) No current or formerly owned or leased real property of the Borrower nor any of its Subsidiaries (i) pursuant to CERCLA or any similar Law has been placed or is proposed to be placed, on the NPL, the CERCLIS or any state or regional equivalent list of known or suspected contaminated sites or (ii) is subject to a written claim, administrative order or other written request or written demand to effect removal or take remedial action.

(f) The Borrower and its Subsidiaries have not sent, transported, accepted for transport, or arranged for transport any Hazardous Substances to a facility, site or location, which, pursuant to CERCLA or any similar Law (i) has been placed or is proposed to be placed, on the NPL, the CERCLIS or any state or regional equivalent list of known or suspected contaminated sites or (ii) is subject to a written claim, administrative order or other request to effect removal or take remedial action.

(g) The Borrower and its Subsidiaries are not subject to any outstanding consent decree, compliance order, or other administrative order pursuant to any Environmental Law, and there are no civil, criminal, or administrative actions, suits, demands, claims, hearings, investigations or other proceedings alleging liability pursuant to Environmental Laws pending or threatened against the Borrower and its Subsidiaries.

(h) The Borrower and its Subsidiaries have not assumed by contract or by operation of law, or agreed to indemnify any other person against, any losses under Environmental Law.

5.18. No Material Misstatements.

The written information reports, financial statements, exhibits and schedules furnished by or on behalf of the Borrower to the Administrative Agent and the Lenders on or prior to the Closing Date in connection with the negotiation of any DIP Loan Document or included therein or delivered pursuant thereto, taken as a whole, did not contain as of the Closing Date any material misstatement of fact and did not omit to state as of the Closing Date any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in their presentation of the Borrower and its Subsidiaries taken as a whole. There is no fact known to any Loan Party or which reasonably should be known to such Loan Party which such party has not disclosed to FTI or the Administrative Agent in writing with respect to the DIP Transactions which would reasonably be expected to have a Material Adverse Effect. It is understood that (a) no representation or

warranty is made concerning the forecasts, estimates, pro forma information, projections and statements as to anticipated future performance or conditions, and the assumptions on which they were based or concerning any information of a general economic nature or general information about Borrower's and its Subsidiaries' industry, contained in any such information, reports, financial statements, exhibits or schedules, except that, in the case of such forecasts, estimates, pro forma information, projections and statements, as of the date such forecasts, estimates, pro forma information, projections and statements were generated, (i) such forecasts, estimates, pro forma information, projections and statements were based on the good faith assumptions of the management of the Borrower and (ii) such assumptions were believed by such management to be reasonable and (b) such forecasts, estimates, pro forma information and statements, and the assumptions on which they were based, may or may not prove to be correct.

5.19. Labor Matters.

There are no strikes pending or, to the knowledge of the Borrower, reasonably expected to be commenced against the Borrower or any of its Subsidiaries which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of the Borrower and each of its Subsidiaries have not been in violation of any applicable laws, rules or regulations, except where such violations would not reasonably be expected to have a Material Adverse Effect.

5.20. Chapter 11 Cases.

The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice has been or will be given of (i) the motion seeking approval of the DIP Loan Documents, the Interim Order and the Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order, as applicable.

5.21. Anti-Terrorism; OFAC.

No Loan Party (a) is a Sanctioned Person, (b) owns any of the Capital Stock of any Sanctioned Entities, or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities, in each case, that would constitute a violation of applicable Laws. To its reasonable knowledge, no proceeds of any DIP Loan will be used and none have been used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, in each case, that would constitute a violation of applicable Laws.

5.22. Security Interest.

This Agreement and the Security Documents, including the Interim Order and/or the Final Order, are effective to create in favor of the Agent, for the benefit of the Lenders, legal, valid, enforceable and continuing first priority Liens on, and security interests in, the DIP Collateral pledged hereunder or thereunder, in each case subject to no Liens other than Permitted Priority Liens with the relative priorities granted pursuant to the terms of the ABL/Term Loan Intercreditor Agreement and the Orders, as applicable. Pursuant to the terms of the Interim Order and/or Final Order, no filing or other action will be necessary to perfect or protect such DIP Liens and security interests. Pursuant to and to the extent provided in the Interim Order and

the Final Order, the Indebtedness of the Loan Parties under this Agreement will constitute part of the DIP Superpriority Claim.

5.23. Orders.

The Loan Parties are in compliance 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) or the Final Order (from after the date the Final Order is entered) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the Administrative Agent and Required Lenders, in their sole discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, a stay pending such appeal is currently effective.

5.24. Business and Property of the Loan Parties.

Upon and after the Closing Date, no Loan Party nor any of their Subsidiaries proposes to engage in any business other than those businesses in which such entity is engaged on the date of this Agreement or that are reasonably related thereto and activities necessary to conduct the foregoing. On the Closing Date, the Loan Parties and their Subsidiaries will own all the property and possess all of the rights and consents necessary for the conduct of such businesses.

5.25. Entity Names.

As of the date hereof, no Loan Party has been known by any other corporate name in the past five years and does not sell Inventory under any other name except as set forth on Schedule 5.25, nor has such Loan Party been the surviving entity of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

5.26. Trading with the Enemy.

No Loan Party or Non-Loan Party Subsidiary has engaged, nor does any such entity intend to engage, in any business or activity that would be a violation of the Trading with the Enemy Act.

5.27. Equity Interests.

The authorized and outstanding Equity Interests of the Loan Parties and their Subsidiaries, and each legal and beneficial holder thereof as of the Closing Date, is as set forth on Schedule 5.27 hereto. All of the Equity Interests of the Loan Parties and their Subsidiaries have been duly and validly authorized and issued and are fully paid and, in the case of Equity Interests evidencing corporate interests, non-assessable and have been sold and delivered to the holders hereof in compliance with, or under valid exemption from, all federal and state laws and the rules and regulations of each Governmental Authority governing the sale and delivery of securities. Except for the rights and obligations set forth on Schedule 5.27, there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which any Loan Party or any of their Subsidiaries or any of the shareholders of any Loan Party or any of their Subsidiaries is bound relating to the issuance, transfer, voting or redemption of shares of its Equity Interests or any pre-emptive rights held by any Person with respect to the Equity Interests

of any Loan Party or any of their Subsidiaries. Except as set forth on Schedule 5.27, no Loan Party and none of their Subsidiaries has issued any securities convertible into or exchangeable for shares of its Equity Interests or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

5.28. Commercial Tort Claims.

No Loan Party is a party to any commercial tort claims except as set forth on Schedule 5.28 hereto (which Schedule 5.28 may be updated at any time upon written notice to Agent).

5.29. Letter of Credit Rights.

No Loan Party has letter of credit rights, except as set forth on Schedule 5.29 hereto (which Schedule 5.29 may be updated at any time upon written notice to Agent).

5.30. Insurance.

All Properties of each Loan Party and its Subsidiaries are insured to the extent required by Subsection 7.5. Schedule 5.30 sets forth a description of such insurance as of the Closing Date.

SECTION 6

CONDITIONS PRECEDENT

6.1. Conditions to Initial Extension of Credit.

This Agreement, including the agreement of each Lender to make the initial Extension of Credit requested to be made by it, shall become effective on the date on which the following conditions precedent shall have been satisfied or waived:

(a) DIP Loan Documents. (A) all material documentation relating to the DIP Facility shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their counsel and (B) the Administrative Agent shall have received the following DIP Loan Documents, executed and delivered as required below:

- (i) this Agreement, executed and delivered by a duly authorized officer of the Borrower;
- (ii) the Initial Budget.
- (iii) the Guaranty Agreement; and
- (iv) the Administrative Agency Fee Letter.

(b) The Related Transactions. The Related Transactions required to be performed on or prior to the Closing Date shall have been performed in the manner contemplated in the Related Agreements.

(c) Litigation; Judgments. Other than the Chapter 11 Cases, or as stayed upon the commencement of the Chapter 11 Cases, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority that (i) except as disclosed, if adversely determined, could reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents, prohibits, restricts or imposes materially adverse conditions upon the DIP Facility, the DIP Collateral or the transactions contemplated hereby.

(d) Consents; Absence of Conflicts. Other than the Orders, (i) all governmental and third party consents and approvals necessary in connection with the DIP Facility and the Related Transactions shall have been obtained (without the imposition of any conditions that are not acceptable to the Administrative Agent and the Required Lenders) and shall remain in effect, and (ii) there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Administrative Agent at the direction of the Required Lenders of its rights as a secured party with respect to the DIP Collateral.

(e) First Day Motions. All first day motions filed by any of the Loan Parties and related orders entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders.

(f) Motions and Documents. All material motions and other documents to be filed with and submitted to the Bankruptcy Court related to the DIP Facility and the approval thereof shall be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders.

(g) Interim Order. The Bankruptcy Court shall have entered the Interim Order within three (3) calendar days following the Petition Date, in form and substance satisfactory to the Administrative Agent and the Required Lenders, which Interim Order shall include, without limitation, copies of the DIP Facility Agreement and the Initial Budget as exhibits thereto, entered on notice to such parties satisfactory to the Administrative Agent and the Required Lenders, (i) authorizing and approving the DIP Facility and the DIP Transactions, including, without limitation, the granting of the superpriority status, security interests and liens, and the payment of all fees, referred to herein; (ii) lifting or modifying the automatic stay to permit the Borrower and the Guarantors to perform their obligations and the Lenders to exercise their rights and remedies with respect to the DIP Facility; (iii) providing for adequate protection in favor of the Pre-Petition Term Lenders as and to the extent provided in the PSA; and (iv) reflecting such other terms and conditions that are satisfactory to the Administrative Agent and the Required Lenders; which Interim Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent and the Required Lenders.

(h) Validity and Priority of DIP Liens. The Collateral Agent, for the benefit of the Lenders, shall have a valid and perfected DIP Lien on and security interest in the DIP Collateral on the basis and with the priority set forth in the definition of "DIP Lien" herein and in the Orders.

(i) [Reserved].

(j) Insurance. Upon request of the Agents, the Borrower shall obtain endorsements naming the Collateral Agent, on behalf of the Lenders, as an additional insured or loss payee, as applicable, under all insurance policies to be maintained with respect to the properties of the Loan Parties and their Subsidiaries forming part of the DIP Collateral, which endorsements shall provide for 30 days' prior notice of cancellation of such policies to be delivered to the Collateral Agent.

(k) [Reserved].

(l) [Reserved].

(m) Officer's Certificate. The Administrative Agent shall have received a certificate from the Borrower, dated the Closing Date, substantially in the form of Exhibit G hereto, with appropriate insertions and attachments.

(n) Guaranty. The Administrative Agent shall have received a fully executed Guaranty by the Guarantors of all Obligations of the Borrower hereunder, in form and substance acceptable to the Administrative Agent and the Required Lenders.

(o) [Reserved].

(p) [Reserved].

(q) [Reserved].

(r) Fees. (i) The Agents and the Lenders, respectively, shall have received all fees related to the DIP Transactions and the Related Transactions payable to them to the extent due (which may be offset against the proceeds of the DIP Facility), and (ii) the Administrative Agent, for the ratable benefit of each Lender as of the Closing Date, shall have received an initial yield payment equal to 2.0% of the aggregate principal amount of the DIP Loans held by such Lender as of the Closing Date, with such payment to be earned by, and payable to, each such Lender on the Closing Date (which may be offset against the proceeds of the DIP Facility).

(s) Secretary's Certificate. The Administrative Agent shall have received a certificate from each Loan Party, dated the Closing Date, substantially in the form of Exhibit F hereto, with appropriate insertions and attachments reasonably satisfactory in form and substance to the Administrative Agent, executed by a Responsible Officer and the Secretary or any Assistant Secretary or other authorized representative of such Loan Party.

(t) Corporate Proceedings of the Loan Parties. The Administrative Agent shall have received a copy of the resolutions or equivalent action, in form and substance reasonably satisfactory to the Administrative Agent, of the Board of Directors of each Loan Party authorizing, as applicable, (i) the execution, delivery and performance of this Agreement, any Notes and the other DIP Loan Documents to which it is or will be a party as of the Closing Date, (ii) the Extensions of Credit to such Loan Party (if any) contemplated hereunder and (iii) the granting by it of the DIP Liens to be created pursuant to the Security Documents to which it will be a party as of the Closing Date, certified by the Secretary, any Assistant Secretary or other authorized representative of such Loan Party as of the Closing Date, which certificate shall be in

substantially the form of Exhibit F hereto and shall state that the resolutions or other action thereby certified have not been amended, modified (except as any later such resolution or other action may modify any earlier such resolution or other action), superseded or revoked in any respect and are in full force and effect as of the Closing Date.

(u) Incumbency Certificates of the Loan Parties. The Administrative Agent shall have received a certificate of each Loan Party, dated as of the Closing Date, as to the incumbency and signature of the officers or other authorized signatories of such Loan Party executing any DIP Loan Document with respect to such Loan Party on the Closing Date.

(v) Governing Documents. The Administrative Agent shall have received copies of the Organizational Documents of each Loan Party, in each case certified as of the Closing Date as true, correct and complete copies (as amended through the Closing Date) by (if applicable) the Secretary of State and Secretary or other authorized representative of such Loan Party and a certificate of good standing of each Loan Party in the state of organization of such Loan Party.

(w) PATRIOT Act. The Administrative Agent and the Lenders shall have received at least three days prior to the Closing Date all documentation and other information about the Loan Parties required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act that has been requested in writing at least ten days prior to the Closing Date.

(x) Counsel Fees. The Borrower shall have paid in full in cash, to the extent invoiced to the Borrower no later than one Business day prior to the Closing Date, all reasonable and documented (in summary form) out-of-pocket fees, charges, disbursements and expenses of (i) the Administrative Agent, (including (and limited, in the case of counsel, to) all reasonable fees, costs, disbursements and expenses of the Administrative Agent’s outside counsel, King & Spalding LLP, and, to the extent necessary, one firm of local counsel engaged by the Administrative Agent in connection with the Chapter 11 Cases) (directly to such counsel if requested by the Administrative Agent), (ii) FTI, as financial advisor to the Lenders (pursuant to the FTI Engagement Letter), and (iii) any other professional advisors retained by the Administrative Agent or their counsel.

(y) Borrowing Notice. With respect to the initial Extensions of Credit, the Administrative Agent shall have received a Committed Loan Notice of such Borrowing as required by Subsection 2.3 and an accompanying funds flow.

The making of the initial Extensions of Credit by the Lenders hereunder shall conclusively be deemed to constitute an acknowledgement by the Administrative Agent and each Lender that each of the conditions precedent set forth in this Subsection 6.1 shall have been satisfied in accordance with its respective terms or shall have been irrevocably waived by such Person.

6.2. Conditions to Each Extension of Credit. The agreement of each Lender to make any Extension of Credit requested to be made by it on any date (including the Closing Date) is subject to the satisfaction or waiver of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party pursuant to this Agreement or any other DIP Loan Document (or in any amendment, modification or supplement hereto or thereto) to which it is a party, and each of the representations and warranties contained in any certificate furnished at any time by or on behalf of any Loan Party pursuant to this Agreement or any other DIP Loan Document shall, except to the extent that they relate to a particular date, be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of such date as if made on and as of such date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extensions of Credit requested to be made on such date.

(c) Notice. The Administrative Agent shall have received a Committed Loan Notice of such Borrowing as required by Subsection 2.3.

(d) Law. Other than the Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Administrative Agent at the direction of the Lenders of its rights as a secured party with respect to the DIP Collateral.

(e) No MAE. No Material Adverse Effect shall have occurred

(f) No injunction. The making of such DIP Loan shall not violate any Requirement of Law and shall not be enjoined temporarily, preliminarily or permanently.

(g) Compliance with Budget. The making of such DIP Loan complies with the Budget, subject to Permitted Variances, or has otherwise been approved in writing by the Administrative Agent (at the direction of the Required Lenders, in their sole discretion).

(h) Final Order. With respect to DIP Loans made after the Closing Date, the Final Order shall have been entered and shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent and the Required Lenders.

(i) PSA. The PSA shall not have been terminated.

Each borrowing of DIP Loans by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such borrowing that the conditions contained in this Subsection 6.2 have been satisfied.

SECTION 7

AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the DIP Loans and all other DIP Facility Obligations then due and owing to any Lender

or Agent hereunder, the Borrower shall and (except in the case of delivery of financial information, reports and notices) shall cause each of its respective Subsidiaries to:

7.1. Financial Statements.

Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) as soon as available, but in any event not later than the 90th day following the end of each Fiscal Year of the Borrower ending on or after the Closing Date, a copy of the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such year and the related consolidated statements of operations, changes in equity and cash flows for such year, setting forth, in each case, in comparative form the figures for and as of the end of the previous year, reported on without, a “going concern” or like qualification or exception, or qualification arising out of the scope of the audit (provided that such report may contain a “going concern” or like qualification or exception, or qualification arising out of the scope of the audit, if such qualification or exception is related solely to the Maturity Date occurring within one year from the date such report is delivered or to the Chapter 11 Cases), by KPMG, LLP or other independent certified public accountants of nationally recognized standing not unacceptable to the Administrative Agent in its reasonable judgment (it being agreed that the furnishing of the Borrower’s annual report on Form 10-K for such year, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower’s obligation under this Subsection 7.1(a) with respect to such year except, as applicable, with respect to the requirement that such financial statements be reported on without a “going concern” or like qualification or exception, or qualification arising out of the scope of the audit);

(b) as soon as available, but in any event not later than the 45th day following the end of each of the first three quarterly periods of each Fiscal Year of the Borrower, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of operations and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth, in each case, in comparative form the figures for and as of the corresponding periods of the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit and other adjustments) (it being agreed that the furnishing of the Borrower’s quarterly report on Form 10-Q for such quarter, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower’s obligations under this Subsection 7.1(b) with respect to such quarter);

(c) as soon as available, but in any event not later than thirty (30) days after the end of each fiscal month of each year, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month and the related unaudited consolidated statements of operations and cash flows of the Borrower and its Subsidiaries for such fiscal month and the portion of the Fiscal Year through the end of such fiscal month, setting forth, in each case, in comparative form the figures for and as of the corresponding periods of the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit and other adjustments) (it being agreed that the furnishing of the Borrower’s quarterly report on Form 10-Q for such fiscal month, as filed

with the United States Securities and Exchange Commission, will satisfy the Borrower's obligations under this Subsection 7.1(b) with respect to such fiscal month); and

(d) all such financial statements delivered pursuant to Subsections 7.1(a), (b) or (c) shall be certified by a Responsible Officer of the Borrower to fairly present in all material respects the financial condition of the Borrower and its Subsidiaries in conformity with GAAP and to be (and, in the case of any financial statements delivered pursuant to Subsections 7.1(b) and c shall be certified by a Responsible Officer of the Borrower as being) in reasonable detail and prepared in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods that began on or after the Closing Date (except, in the case of any financial statements delivered pursuant to Subsections 7.1(b) and (c), for the absence of certain footnotes).

7.2. Certificates; Other Information.

Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) following the delivery of the Initial Budget on Closing Date, (i) every four weeks thereafter during the Chapter 11 Cases, the Borrower shall provide the Administrative Agent with a cash flow forecast for the Borrower, with line item detail of projected sales, disbursements, collections, and the outstanding amount of Advances (as defined in the ABL DIP Facility Agreement) for the then-upcoming thirteen (13) week period, in each case, in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Required Lenders) (each such forecast approved by the Administrative Agent at the direction of the Supermajority Lenders) and consistent with the form of the Initial Budget delivered on the Closing Date, (the "Budget"); and (ii) beginning on the second Friday following the Closing Date, and on each Friday following, a variance report (the "Variance Report") setting forth actual cash receipts and disbursements of the Loan Parties for the prior week and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the Initial Budget or the most recently approved Budget delivered prior to such Variance Report on a weekly and cumulative basis (which shall be subject to the variances set forth in the DIP Loan Documents), and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of the Debtors.

(b) concurrently with the delivery of the financial statements and reports referred to in Subsections 7.1(a), (b) and (c) (x) a certificate signed by a Responsible Officer of the Borrower (a "Compliance Certificate") stating that, to the best of such Responsible Officer's knowledge, each of the Borrower and its Subsidiaries during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement or the other DIP Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default, except, in each case, as specified in such certificate and (y) a copy of management's discussion and analysis with respect to financial statements.

(c) as soon as available, but in any event not later than the 30th day prior to the end of Fiscal Year 2015 of the Borrower and each Fiscal Year thereafter, a copy of the annual

business plan by the Borrower of the projected operating budget (including an annual consolidated balance sheet, income statement and statement of cash flows of the Borrower and its Subsidiaries for each fiscal quarter of such Fiscal Year prepared in reasonable detail), each such business plan to be accompanied by a certificate signed by a Responsible Officer of the Borrower to the effect that such Responsible Officer believes such projections to have been prepared on the basis of reasonable assumptions at the time of preparation and delivery thereof;

(d) within five Business Days after the same are filed, copies of all financial statements and periodic reports which the Borrower may file with the SEC or any successor or analogous Governmental Authority;

(e) within five Business Days after the same are filed, copies of all registration statements and any amendments and exhibits thereto, which the Borrower may file with the SEC or any successor or analogous Governmental Authority;

(f) promptly, such additional financial and other information as any Agent or Lender may from time to time reasonably request; and

(g) promptly upon request from any Agent or Lender (i) copies of any records, documents or other information that must be furnished to the PBGC with respect to any Single Employer Plan pursuant to Section 4010 of ERISA, (ii) a copy of each funding waiver request filed with the IRS and all communications received by the Borrower or any Commonly Controlled Entity from the IRS or any other government agency with respect each Single Employer Plan, (iii) a complete copy of the annual report (on IRS Form 5500-series) of each Single Employer Plan (including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) required to be filed with the IRS and (iv) copies of any records, documents or other information required to be furnished to the PBGC or any other government agency, and any material notices received by the Borrower or any Commonly Controlled Entity, with respect to any Single Employer Plan.

Documents required to be delivered pursuant to Subsection 7.1(a), 7.1(b), 7.1(c), 7.2(a), 7.2(b), 7.2(c), 7.2(d), 7.2(e), 7.2(g) or 7.2(h) may at the Borrower's option be delivered electronically in accordance with the terms of Subsection 11.2(d).

The Borrower hereby acknowledges that (i) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a

minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Subsection 11.16); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

7.3. Payment of Obligations.

Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all Taxes (x) except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings diligently conducted and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or any of its Subsidiaries, as the case may be, or (y) except for Taxes owed to Liberty County, TX pursuant to one or more tax abatement or tax payment agreements.

7.4. Conduct of Business and Maintenance of Existence; Compliance with Contractual Obligations and Requirements of Law.

(a) Preserve, renew and keep in full force and effect its existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the business of the Borrower and its Subsidiaries, taken as a whole, including all licenses, patents, copyrights, design rights, tradenames, trade secrets and trademarks and take all actions necessary to enforce and protect the validity of any intellectual property right or other right included in the DIP Collateral, except as otherwise permitted pursuant to Subsection 8.2 or 8.7, provided that the Borrower and its Subsidiaries shall not be required to maintain any such rights, privileges or franchises, if the failure to do so would not reasonably be expected to be adverse to the Lenders or any Loan Party in any material respect, (b) maintain a cash management system as in effect on the Petition Date, and (c) other than with respect to the Specified Events of Default and the Chapter 11 Cases, and in accordance with the Bankruptcy Code and subject to any required approval by any applicable order of the Bankruptcy Court, comply with all post-petition Contractual Obligations and Contractual Obligations entered into prior to the Petition Date and assumed and Requirements of Law except to the extent that failure to comply therewith, in the aggregate, would not reasonably be expected to be adverse to the Lenders or any Loan Party in any material respect.

7.5. Maintenance of Property; Insurance.

(a) (i) Keep all property useful and necessary in the business of the Borrower and its Subsidiaries, taken as a whole, in good working order and condition, except where failure to do so would not reasonably be expected to be adverse to the Lenders or any Loan Party in any material respect; (ii) maintain with financially sound and reputable insurance companies insurance on, or self-insure, all property material to the business of the Borrower and its

Subsidiaries, taken as a whole, in at least such amounts and against at least such risks (but including in any event public liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business; (iii) furnish to the Administrative Agent, upon written request, information in reasonable detail as to the insurance carried; (iv) maintain property and liability policies that provide that in the event of any cancellation thereof during the term of the policy, either by the insured or by the insurance company, the insurance company shall provide to the secured party at least 30 days prior written notice thereof, or in the case of cancellation for non-payment of premium, ten days prior written notice thereof; (v) in the event of any material change in any of the property or liability policies referenced in the preceding clause (iv), provide the Administrative Agent with at least 30 days prior written notice thereof; and (vi) ensure that subject to the Orders at all times the Collateral Agent for the benefit of the Secured Parties, shall be named as an additional insured with respect to liability policies maintained by the Borrower and each Subsidiary Guarantor and the Collateral Agent for the benefit of the Secured Parties, shall be named as loss payee with respect to the property insurance maintained by the Borrower and each Subsidiary Guarantor. Notwithstanding the foregoing, any failure by any Loan Party to be in compliance with clauses (iv) or (vi) of this Subsection 7.5(a) as of the Closing Date shall not constitute a breach of this Subsection 7.5(a) provided the Borrower and any Subsidiary Guarantor, as applicable, uses commercially reasonable efforts to provide such thirty (30) day notice or obtain such endorsements following the Closing Date.

(b) With respect to each property of the Loan Parties subject to a Mortgage:

(i) If any portion of any such property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, such Loan Party shall maintain or cause to be maintained, flood insurance to the extent required by, and in compliance with, applicable law.

(ii) The applicable Loan Party promptly shall comply with and conform to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers applicable to such party or to such property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of such property, except for such non-compliance or non-conformity as would not, individually or in the aggregate, reasonably be expected to result in a liability or loss in excess of \$500,000 or to have a Material Adverse Effect. The applicable Loan Party shall not use or permit the use of such property in any manner which would reasonably be expected to result in the cancellation of any insurance policy or would reasonably be expected to void coverage required to be maintained with respect to such property pursuant to clause (a) of this Subsection 7.5.

(iii) If the Borrower is in default of its obligations to insure or deliver any such prepaid policy or policies, the result of which would reasonably be expected to be adverse to the Lenders or any Loan Party in any material respect or to have a Material Adverse Effect, then the Administrative Agent, at its option upon ten days' written notice to the Borrower, may effect such insurance from

year to year at rates substantially similar to the rate at which the Borrower or any Subsidiary had insured such property, and pay the premium or premiums therefor, and the Borrower shall pay to the Administrative Agent on demand such premium or premiums so paid by the Administrative Agent with interest from the time of payment at a rate per annum equal to 3.00%.

(iv) If such property, or any part thereof, shall be destroyed or damaged and the reasonably estimated cost thereof would reasonably be expected to be adverse to the Lenders or any Loan Party in any material respect, the Borrower shall give prompt notice thereof to the Administrative Agent. All insurance proceeds paid or payable in connection with any damage or casualty to any property shall be applied in the manner specified in the proviso to Subsection 7.5(a).

7.6. Inspection of Property; Books and Records; Discussions; Quarterly Management Call.

In the case of the Borrower, keep proper books and records in a manner to allow financial statements to be prepared in conformity with GAAP consistently applied in respect of all material financial transactions and matters involving the material assets and business of the Borrower and its Subsidiaries, taken as a whole, subject to the impact of the commencement of the Chapter 11 Cases and the transactions contemplated thereby, and any impairment that may be applicable at such time; and permit representatives of the Administrative Agent to visit and inspect any of its properties and examine and, to the extent reasonable, make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Borrower and its Subsidiaries with officers of the Borrower and its Subsidiaries and with its independent certified public accountants, in each case at any reasonable time, upon reasonable notice, and as often as may reasonably be desired; provided that representatives of the Borrower may be present during any such visits, discussions and inspections. Promptly after the time of delivery of financial statements with respect to the preceding fiscal quarter pursuant to Subsections 7.1(a), (b) or (c) as applicable (and in no event more than 20 days after the time such financial statements are required to be delivered pursuant to Subsection 7.1(a) or Subsection 7.1(b), as applicable), at the request of the Administrative Agent, FTI or any Lender, the Borrower shall, and shall cause one or more of its Responsible Officers to, conduct a conference call with the Administrative Agent and the Lenders to discuss such financial statements.

7.7. Notices.

Promptly give notice to the Administrative Agent and each Lender of:

(a) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of any Default or Event of Default;

(b) as soon as possible after a Responsible Officer of the Borrower knows thereof, any default or event of default under any Contractual Obligation of the Borrower or any of its Subsidiaries, other than as previously disclosed in writing to the Lenders, which would

reasonably be expected to result in a liability or loss in excess of \$250,000 or to have a Material Adverse Effect;

(c) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of (i) any default or event of default under the Pre-Petition Term Facility Agreements, (ii) any default or event of default under the Senior ABL Facility Agreement or (iii) any payment default with respect to any other obligation in excess of \$100,000;

(d) as soon as possible after a Responsible Officer of the Borrower knows thereof, any litigation, investigation or proceeding affecting the Borrower or any of its Subsidiaries that would reasonably be expected to result in a liability or loss in excess of \$100,000, or any litigation, investigation or proceeding with respect to the DIP Facility, the Chapter 11 Cases and any Related Transaction;

(e) the following events, as soon as possible and in any event within 5 days after a Responsible Officer of the Borrower or any of its Subsidiaries knows thereof: (i) the occurrence or expected occurrence of any Reportable Event (or similar event) with respect to any Single Employer Plan, a failure to make any required contribution to a Single Employer Plan or Multiemployer Plan, the creation of any Lien on the property of the Borrower or any Commonly Controlled Entity in favor of the PBGC or a Plan or any withdrawal from, or the full or partial termination, Reorganization or Insolvency of, any Multiemployer Plan; (ii) the institution of proceedings or the taking of any other formal action by the PBGC or the Borrower or any of its Subsidiaries or any Commonly Controlled Entity or any Multiemployer Plan which would reasonably be expected to result in the withdrawal from, or the termination, Reorganization or Insolvency of, any Single Employer Plan or Multiemployer Plan; or (iii) the first occurrence after the Closing Date of an Underfunding under a Single Employer Plan that exceeds 10.0% of the value of the assets of such Single Employer Plan in each case, determined as of the most recent annual valuation date of such Single Employer Plan on the basis of the actuarial assumptions used to determine the funding requirements of such Single Employer Plan as of such date;

(f) as soon as possible after a Responsible Officer of the Borrower knows thereof, (i) any Release or threatened Release by the Borrower or any of its Subsidiaries of any Hazardous Substances required to be reported under applicable Environmental Laws to any Governmental Authority; (ii) any condition, circumstance, occurrence or event not previously disclosed in writing to the Administrative Agent that would reasonably be expected to result in liability or expense under applicable Environmental Laws or Environmental Permit; and (iii) any proposed action to be taken by the Borrower or any of its Subsidiaries that would reasonably be expected to subject the Borrower or any of its Subsidiaries to any material additional or different requirements or liabilities under Environmental Laws;

(g) any loss, damage, or destruction to a significant portion of the DIP Collateral, whether or not covered by insurance; and

(h) not less than 30 days prior to any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

Each notice pursuant to this Subsection 7.7 shall be accompanied by a statement of a Responsible Officer of the Borrower (and, if applicable, the relevant Commonly Controlled Entity or Subsidiary) setting forth details of the occurrence referred to therein and stating what action the Borrower (or, if applicable, the relevant Commonly Controlled Entity or Subsidiary) proposes to take with respect thereto.

7.8. Environmental Laws.

(a) (i) Comply substantially with, and require substantial compliance by all tenants, subtenants, contractors, and invitees with, all applicable Environmental Laws; (ii) obtain, comply substantially with and maintain any and all Environmental Permits necessary for its operations as conducted and as planned; and (iii) require that all tenants, subtenants, contractors, and invitees obtain, comply substantially with and maintain any and all Environmental Permits necessary for their operations as conducted and as planned, with respect to any property leased or subleased from, or operated by the Borrower or its Subsidiaries. For purposes of this Subsection 7.8(a), noncompliance shall not constitute a breach of this covenant, provided that, upon learning of any actual or suspected noncompliance, the Borrower and any such affected Subsidiary shall promptly undertake and diligently pursue reasonable efforts, if any, to achieve compliance.

(b) Promptly comply, in all material respects, with all orders and directives of all Governmental Authorities regarding Environmental Laws.

7.9. After-Acquired Real Property and Fixtures; Subsidiaries.

(a) With respect to any owned real property or fixtures thereon, in each case with a purchase price or a fair market value at the time of acquisition of at least \$100,000, in which any Loan Party acquires ownership rights at any time after the Closing Date (or owned by any Subsidiary that becomes a Loan Party after the Closing Date), promptly grant to the DIP Collateral Agent for the benefit of the Secured Parties, a DIP Lien of record on all such owned real property and fixtures pursuant to a Mortgage or otherwise, upon terms reasonably satisfactory in form and substance to the Collateral Agent and in accordance with any applicable requirements of any Governmental Authority (including any required appraisals of such property under FIRREA and flood determinations under Regulation H of the Board); provided that (i) nothing in this Subsection 7.9 shall defer or impair the attachment or perfection of any security interest in any DIP Collateral covered by any of the Security Documents which would attach or be perfected pursuant to the terms thereof without action by the Borrower, any of its Subsidiaries or any other Person and (ii) no such DIP Lien shall be required to be granted as contemplated by this Subsection 7.9 on any owned real property or fixtures the acquisition of which is, or is to be, within thirty (30) days of such acquisition, financed or refinanced, in whole or in part through the incurrence of Indebtedness, until such Indebtedness is repaid in full (and not refinanced) or, as the case may be, the Borrower determines not to proceed with such financing or refinancing. In connection with any such grant to the Collateral Agent, for the benefit of the Secured Parties, of a DIP Lien of record on any such real property pursuant to a Mortgage or otherwise in accordance with this Subsection 7.9, the Borrower or such Subsidiary shall deliver or cause to be delivered to the Collateral Agent corresponding UCC fixture filings and any surveys, appraisals (including any required appraisals of such property under FIRREA or in connection with flood

determinations under Regulation H of the Board), title insurance policies, environmental reports, legal opinions and other documents in connection with such grant of such DIP Lien obtained by it in connection with the acquisition of such ownership rights in such real property consistent with the requirements of Subsection 6.1(j) or as the Collateral Agent shall reasonably request (in light of the value of such real property and the cost and availability of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents and whether the delivery of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents would be customary in connection with such grant of such DIP Lien in similar circumstances).

(b) With respect to any Domestic Subsidiary created or acquired (including by reason of any Foreign Subsidiary Holdco ceasing to constitute the same) subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries, promptly notify the Administrative Agent of such occurrence and, if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent for the benefit of the Secured Parties such joinders to the Credit Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Domestic Subsidiary owned directly by the Borrower or any of its Domestic Subsidiaries, (ii) deliver to the Collateral Agent the certificates (if any) representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the parent of such new Domestic Subsidiary and (iii) cause such new Domestic Subsidiary (A) to become a party to this Credit Agreement and (B) to take all actions reasonably deemed by the Collateral Agent to be necessary or advisable to cause the DIP Lien created by this Credit Agreement in such new Domestic Subsidiary's DIP Collateral to be duly perfected in accordance with all applicable Requirements of, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Collateral Agent.

(c) With respect to any Foreign Subsidiary created or acquired subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries, the Capital Stock of which is owned directly by the Borrower or a Domestic Subsidiary that is a Wholly Owned Subsidiary, promptly notify the Administrative Agent of such occurrence and if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent a new joinder to this Credit Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is directly owned by the Borrower or any Domestic Subsidiary and (ii) to the extent reasonably deemed advisable by the Collateral Agent, deliver to the Collateral Agent the certificates, if any, representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the relevant parent of such new Subsidiary and take such other action as may be reasonably deemed by the Collateral Agent to be necessary or desirable to perfect the Collateral Agent's security interest therein (provided that in either case in no event shall more than 65.0% of each series of Capital Stock of any new Foreign Subsidiary be required to be so pledged).

(d) At its own expense, execute, acknowledge and deliver, or cause the execution, acknowledgement and delivery of, and thereafter register, file or record in an

appropriate governmental office, any document or instrument reasonably deemed by the Collateral Agent to be necessary or desirable for the creation, perfection and priority and the continuation of the validity, perfection and priority of the foregoing DIP Liens or any other Liens created pursuant to this Credit Agreement and the other Security Documents (to the extent the Collateral Agent determines, in its reasonable discretion, that such action is required to ensure the perfection or the enforceability as against third parties of its security interest in such DIP Collateral) in each case in accordance with, and to the extent required by, the applicable Security Document.

(e) Notwithstanding anything to the contrary in this Agreement, (A) the foregoing requirements shall be subject to the terms of the Orders, and, in the event of any conflict with such terms, the terms of the Orders shall control and (B) nothing in this Subsection 7.9 shall require that any Subsidiary grant a Lien with respect to any property or assets in which such Subsidiary acquires ownership rights to the extent that the Administrative Agent, in its reasonable judgment, determines that the granting of such a Lien is impracticable.

7.10. Use of Proceeds.

Use the proceeds of the DIP Loans only for the purposes set forth in Subsection 5.16.

7.11. Further Assurances. Subject to the Orders, execute and deliver to Agent from time to time, promptly upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral, and such other instruments as Agent, at the direction of the Required Lenders, may request, in order that the full intent of this Agreement may be carried into effect. Subject to the Orders, the Loan Parties shall take all action that may be necessary or desirable, or that Agent may request, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited to, (a) immediately discharging all Liens other than Permitted Encumbrances, (b) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all chattel paper, instruments, equity certificates, letters of credits and advices thereof and documents evidencing or forming a part of the Collateral, (c) entering into warehousing, lockbox and other custodial arrangements satisfactory to the Required Lenders, and (d) executing and delivering financing statements, control agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to the Required Lenders, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest and Lien under the Uniform Commercial Code or other Applicable Law. By its signature hereto, each Loan Party hereby authorizes Agent to, in connection with, and to the extent contemplated by, this Agreement, and subject to the Orders, file against such Loan Party, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form and substance satisfactory to the Required Lenders (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of collateral as "all assets" and/or "all personal property" of such Loan Party). Notwithstanding anything herein to the contrary, the Agent and Lenders agree that they will not require the filing of any mortgages or entry into any control

agreements with respect to the Collateral on the Closing Date, it being understood and agreed that the Required Lenders may, in their reasonable discretion, at any time after the Closing Date require the satisfaction of any requirements for the granting or perfection of liens required or desirable pursuant to any foreign applicable laws, provided, however, that (i) the Loan Parties shall be given a reasonable amount of time to satisfy such requirements and (ii) no such request will be made to the extent the costs and burden of doing so reasonably outweigh the benefits to be gained as determined by the Required Lenders.

7.12. Accounting Changes.

The Borrower will, for financial reporting purposes, cause the Borrower's and each of its Subsidiaries' Fiscal Years to end on December 31st of each calendar year.

7.13. [Reserved].

[Reserved].

7.15. [Reserved].

7.16. Pre-Petition Credit Enhancements. If any Pre-Petition Term Agent or Pre-Petition Term Lender, in its capacity as such, or if the Senior ABL Facility Agent or any lender under the Senior ABL Facility receives any additional guaranty after the date hereof, the Borrower shall cause the same to be granted to the Administrative Agent, for its own benefit and the benefit of the Secured Parties (subject to the Orders).

7.17. Bankruptcy Covenants.

Notwithstanding anything in the DIP Loan Documents to the contrary, the Loan Parties shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the Orders.

7.18. Chapter 11 Cases.

(a) Chapter 11 Case Documents and Notices. Each Loan Party shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable and in any event not less than two (2) Business Days prior to filing, all material pleadings, motions and other documents (provided that any of the foregoing relating to the DIP Facility shall be deemed material) to be filed on behalf of the Loan Parties with the Bankruptcy Court to the Agent and its counsel. If not otherwise provided by the Bankruptcy Court's electronic docketing system, the Borrower shall provide (x) copies to the Administrative Agent of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Loan Parties with the Bankruptcy Court, distributed by or on behalf of the Loan Parties to any Committee, filed with respect to the Chapter 11 Cases or filed with respect to any DIP Loan Document and (y) such other reports and information as the Administrative Agent may, from time to time, reasonably request. In connection with the Chapter 11 Cases, the Loan Parties shall give the proper notice for (x) the motions seeking approval of the DIP Loan Documents and the Orders and (y) the hearings for the approval of the Orders. The Borrower and the other Loan Parties shall give, on a timely basis as specified in the Orders, all notices

required to be given to all parties specified in the Orders. The Borrower and the other Loan Parties shall use reasonable best efforts to obtain the Final Order.

(b) Progress Calls. The Borrower shall hold weekly progress conference calls for the Agent and the Lenders, starting in the first week following the Closing Date, until the payment in full in cash of the DIP Facility Obligations and the termination of the Aggregate Revolving Loan Commitment. Such conference calls shall be attended by the Financial Advisor and be held every week as soon as a Responsible Officer of the Borrower and a representative of the Financial Advisor are reasonably available to have such conference call. During such conference calls a Responsible Officer of the Borrower and the Financial Advisor shall provide the participating Lenders with a reasonably comprehensive update on the Chapter 11 Cases, variances with respect to the Budget and any other material information relating to the business, condition (financial or otherwise), operation, performance, properties or prospects of any of the Loan Parties and any other information that may be reasonably requested by the Agent or any Lender.

(c) Restructuring Proposals. Each Loan Party shall promptly deliver or cause to be delivered to the Agent and the Lenders copies of any term sheets, proposals, presentations or other documents, from any party, related to (i) the restructuring of the Loan Parties, or (ii) the sale of assets of one or all of the Loan Parties.

(d) Advisors. The Loan Parties shall continue to retain the Financial Advisor, in each case pursuant to the FTI Engagement Letter or other engagement letters having terms and conditions acceptable to the Agent in its sole discretion. The Loan Parties shall allow the Agent and the Lenders access to, upon reasonable notice during normal business hours in a time and manner to minimize disruption to the Loan Parties, the Financial Advisor and any other third party advisors of the Loan Parties, as applicable.

(e) Repayment of Indebtedness. Except to the extent permitted hereunder, under the Orders or under the Budget, no Loan Party shall, without the express prior written consent of the Agent and Required Lenders or pursuant to an order of the Bankruptcy Court after notice and a hearing, make any Pre-Petition Payment.

(f) [Reserved].

(g) Agreements. Except as approved in writing by the Agent (acting at the direction of the Required Lenders), no Loan Party shall assume, reject, cancel, terminate, breach or modify (x) any material agreement, contract, instrument or other document to which any Loan Party is a party or (y) any other agreement, contract, instrument or other document if such assumption, rejection, cancellation, termination, breach or modification, either individually or in the aggregate, would have a negative effect on the value of the DIP Collateral or a Material Adverse Effect upon the Loan Parties' operations.

SECTION 8

NEGATIVE COVENANTS

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the DIP Loans and all other DIP Facility Obligations then due and owing to any Lender or any Agent hereunder:

8.1. Limitation on Indebtedness.

(a) The Borrower will not, and will not permit any Subsidiary to, Incur any additional Indebtedness.

(b) Notwithstanding the foregoing Subsection 8.1(a), the Borrower and its Subsidiaries may Incur the following Indebtedness:

(i) (I) Indebtedness Incurred by the Borrower and the Guarantors pursuant to this Agreement and the other DIP Loan Documents (II) Indebtedness Incurred by the Borrower and the Guarantors pursuant to the Pre-Petition Term Facilities, in a maximum principal amount for all such Indebtedness at any time outstanding not to exceed the sum of (x) \$240,000,000 plus (y) any increase in the principal amount of such Indebtedness pursuant to payment-in-kind interest due thereon, (III) Indebtedness Incurred by the Borrower and the Guarantors pursuant to the Senior ABL Facility, in a maximum principal amount for all such Indebtedness at any time outstanding not exceeding \$75,000,000 and (IV) Indebtedness Incurred by the Borrower and the Guarantors pursuant to the ABL DIP Facility, in a maximum principal amount for all such Indebtedness at any time outstanding not exceeding \$85,000,000.

(ii) [Reserved];

(iii) Indebtedness represented by any Indebtedness (other than the Indebtedness described in Subsections 8.1(b)(i)) outstanding on the Closing Date and set forth on Schedule 8.1;

(iv) Indebtedness represented by any loans, advances, capital contributions or acquisitions, forming any joint ventures or partnerships, or the making of any other investments in any Subsidiaries or any other Person, in each case agreed to in writing by the Required Lenders;

(v) [Reserved];

(vi) Guarantees by the Borrower or any Subsidiary of Indebtedness or any other obligation or liability of the Borrower or any Subsidiary outstanding on the Closing Date and set forth on Schedule 8.1 or otherwise permitted under this Subsection 8.1;

(vii) Indebtedness of the Borrower or any Subsidiary arising from the honoring of a check, draft or similar instrument of such Person drawn against

insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within five Business Days of its Incurrence; and

(viii) Indebtedness of the Borrower or any Subsidiary in respect of (A) letters of credit, bankers' acceptances or other similar instruments or obligations issued, or relating to liabilities or obligations incurred in the ordinary course of business under indemnity, performance, surety, statutory, appeal and similar bonds, worker's compensation claims, bonds, letters of credit and completion guarantees, or (B) completion guarantees, surety, judgment, appeal or performance bonds, or other similar bonds, instruments or obligations, provided, or relating to liabilities or obligations incurred, in the ordinary course of business or (C) netting, overdraft protection and other arrangements arising under standard business terms of any bank at which the Borrower or any Subsidiary maintains an overdraft, cash pooling or other similar facility or arrangement.

8.2. Limitation on Restricted Payments.

(a) The Borrower shall not, and shall not permit any Subsidiary, directly or indirectly, to (i) declare or pay any dividend or make any distribution on or in respect of its Capital Stock (including any such payment in connection with any merger or consolidation to which the Borrower is a party) except (x) dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock) on a pro rata basis to all holders and (y) dividends or distributions payable to the Borrower or any Loan Party (and to other holders of its Capital Stock on no more than a pro rata basis, measured by value), (ii) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Borrower held by Persons other than the Borrower or a Loan Party (other than any acquisition of Capital Stock deemed to occur upon the exercise of options if such Capital Stock represents a portion of the exercise price thereof), (iii) voluntarily prepay, purchase, repurchase, redeem, defease or otherwise voluntarily acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment any Indebtedness of any Loan Party or its Subsidiaries, (iv) except as set forth in clause (i) above, make any bonus payments in respect of any warrants, options, repurchase of stock or any other related distributions, (v) make any bonus payments to executive officers of the Loan Parties and their Subsidiaries in excess of the amounts set forth in the Budget, or (vi) make any Investment (other than a Permitted Investment) in any Person (any such dividend, distribution, purchase, repurchase, redemption, defeasance, other acquisition or retirement, bonus payment or Investment being herein referred to as a "Restricted Payment").

(b) The provisions of Subsection 8.2(a) do not prohibit the following (each, a "Permitted Payment"):

(i) (A) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a partnership or a disregarded entity for U.S. federal income tax purposes, Permitted Tax Distributions, and (B) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a corporation for U.S. federal income tax purposes, without duplication of any loans, advances, dividends, distributions or payments made pursuant to clause (i)(A) of this Subsection 8.2(b), loans,

advances, dividends or distributions to any parent entity or other payments by the Borrower or any Subsidiary, to pay, or permit any parent entity to pay, federal, state, foreign, provincial or local taxes measured by income for which any parent entity is liable up to an amount not to exceed, with respect to federal taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated basis as if the Borrower had filed a consolidated return on behalf of an affiliated group (as defined in Section 1504 of the Code) of which it were the common parent, or with respect to state and local taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated, combined, unitary or affiliated basis as if the Borrower had filed a consolidated, combined, unitary or affiliated return on behalf of an affiliated group (as defined in the applicable state or local tax laws for filing such return) consisting only of the Borrower and its Subsidiaries;

(ii) any Restricted Payments required in connection with the Prearranged Chapter 11 Plan or the Orders; and

(iii) any prepayment or repayment of borrowings under the ABL DIP Facility in accordance with the Budget (other than any cash constituting Proceeds of ABL Collateral received by or paid to or for the account of any Loan Party or any Subsidiary that is not in the ordinary course of business) and provided there is no concomitant reduction or termination of commitments thereunder or any other prepayment consistent with the PSA and in accordance with the Budget.

8.3. Limitation on Restrictive Agreements.

The Borrower will not, and will not permit any Subsidiary to, create or otherwise cause to exist or become effective any consensual encumbrance or restriction on (i) the ability of the Borrower or any of its Subsidiaries to create, incur, assume or suffer to exist any Lien in favor of the Lenders in respect of obligations and liabilities under this Agreement or any other DIP Loan Documents upon any of its property, assets or revenues constituting DIP Collateral as and to the extent contemplated by this Agreement and the other DIP Loan Documents, whether now owned or hereafter acquired or (ii) the ability of any Subsidiary to (x) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Borrower, (y) make any loans or advances to the Borrower or (z) transfer any of its property or assets to the Borrower, except any encumbrance or restriction:

(a) pursuant to an agreement or instrument in effect at or entered into on the Closing Date, this Agreement and the other DIP Loan Documents, the Pre-Petition Term Facility Documents, the Senior ABL Facility Documents, the ABL DIP Facility Documents or the ABL/Term Loan Intercreditor Agreement;

(b) (i) pursuant to any agreement or instrument that restricts in a customary manner the assignment or transfer thereof, or the subletting, assignment or transfer of any property or asset subject thereto, (ii) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Borrower or any Subsidiary, (iii) pursuant to Purchase Money Obligations that impose encumbrances or

restrictions on the property or assets so acquired to the extent such Purchase Money Obligation is either (1) outstanding on the Closing Date or (2) contemplated by the Budget (except to the extent that any such encumbrances or restrictions could reasonably be expected to be adverse to the Lenders in any material respect); or

(c) by reason of any applicable law, rule, regulation or order, or required by any regulatory authority having jurisdiction over the Borrower or any Subsidiary or any of their businesses;

8.4. Limitation on Sales of Assets and Subsidiary Stock.

The Borrower will not, and will not permit any Subsidiary to, make any Asset Disposition other than:

- (i) Asset Dispositions of Inventory in the ordinary course of business;
- (ii) Asset Disposition or transfer of obsolete or worn-out Equipment in the ordinary course of business;
- (iii) disposition of Cash Equivalents;
- (iv) to the extent constituting an Asset Disposition, any Permitted Payment permitted under Subsection 8.2, or the granting of any Lien permitted under Subsection 8.6;
- (v) the abandonment or other disposition of immaterial patents, trademarks or other intellectual property that are, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Subsidiaries taken as a whole;
- (vi) any non-exclusive license, sublicense or other grant of right-to-use of any trademark, copyright, patent or other intellectual property; and
- (vii) Asset Disposition consented to by the Required Lenders in writing.

8.5. Limitations on Transactions with Affiliates.

The Borrower will not, and will not permit any Subsidiary to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower (an "Affiliate Transaction"), except (a) for Permitted Payments, (b) the Borrower shall be permitted to maintain any existing Affiliate Transaction entered into prior to the Closing Date and any payments made pursuant thereto to the extent permitted hereunder and made in accordance with the Budget; provided (i) that the terms of such Affiliate Transaction are not materially less favorable to the Borrower or such Subsidiary, as the case may be, than those that could be obtained at the time in a transaction with a Person who is not such an Affiliate and (ii) no payments shall be permitted under the Access Management Agreement, (c) for any transaction between or among any of the Borrower or one or more Loan Parties, (d) the Related Transactions, or any amendments or modifications thereto and permitted hereby, and any

payments made pursuant thereto to the extent permitted hereunder and made in accordance with the Budget, (e) the execution, delivery and performance of the Access Management Agreement and (f) the Pre-Petition Term Facility Documents, or any amendments or modifications thereto and permitted hereby, and any payments made pursuant thereto to the extent permitted hereunder and made in accordance with the Budget.

8.6. Limitation on Liens.

Create or suffer to exist any Lien or transfer upon or against any of its property or assets now owned or hereafter acquired, except (a) DIP Liens created hereunder or under the other Security Documents securing the DIP Facility Obligations, (b) Permitted Encumbrances and (c) Permitted Liens.

8.7. Limitation on Fundamental Changes.

(a) The Borrower will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to any Person and (b) none of the Loan Parties will permit any change in accounting or treatment or reporting practices, except as required by GAAP or as expressly permitted hereunder.

8.8. Limitation on Lines of Business.

The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any business, either directly or through any Subsidiary, except for those businesses of the same general type as those in which the Borrower and its Subsidiaries are engaged in on the Closing Date or which are reasonably related thereto.

8.9. Sanctions.

The Borrower shall not knowingly permit the proceeds of any DIP Loan to 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, in each case, that would constitute a violation of applicable Laws.

8.10. [Reserved].

8.11. Chapter 11 Claims.

Except for the Carve-Out and Permitted Priority Liens and as provided in the Orders, the Loan Parties will not, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien that is pari passu with or senior to the claims or DIP Liens, as the case may be, of the Administrative Agent and the Lenders against the Loan Parties hereunder or under the Orders, or apply to the Bankruptcy Court for authority to do so.

8.12. Revision of Orders; Applications to Bankruptcy Court.

The Loan Parties will not, directly or indirectly, (a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of any Order except for any modifications and amendments agreed to in writing by the Administrative Agent and the

Required Lenders, in their sole discretion, or (b) apply to the Bankruptcy Court for authority to take any action prohibited by this Section 8 (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the Administrative Agent and the Required Lenders, in their sole discretion).

8.13. Compliance with Budget.

(a) Except as otherwise provided herein or approved by the Administrative Agent (at the direction of the Required Lenders, in their sole discretion), the Loan Parties will not, and will not permit any Subsidiary thereof to, directly or indirectly, (a) use any cash, including the proceeds of any DIP Loans, in a manner or for a purpose other than those permitted under this Agreement, the Orders or the Budget, (b) permit a disbursement causing any variance from the Budget other than Permitted Variances without the prior written consent of the Administrative Agent (at the direction of the Required Lenders, in their sole discretion), (c) make any Pre-Petition Payment or application for authority to make any Pre-Petition Payment, other than those permitted by this Agreement, the Orders or the Budget, (d) make or commit to make payments to critical vendors (other than those critical vendors set forth in the Orders or in the Budget, in each case as approved in writing by the Administrative Agent at the direction of the Required Lenders) in respect of any pre-petition amount in excess of the amount included in the Budget, (e) permit the actual aggregate disbursements to exceed the aggregate amount of disbursements in the Budget for the applicable period by more than the Permitted Variance, and (f) permit the actual aggregate cash receipts (excluding proceeds of the DIP Loans that may be deemed a receipt) during the applicable period to be less than the aggregate amount of such cash receipts in the Budget for such period by more than the Permitted Variance; provided, however, that a Default or Event of Default shall not be deemed to occur on account of the failure to meet one of such aggregate cash receipts covenants if the Loan Parties receive sufficient additional receipts within three (3) Business Days after the applicable date of determination that, when added to the receipts as of the applicable date of determination, would enable the Loan Parties to satisfy such covenant; and

(b) So long as an unwaived Termination Event has not occurred, and to the extent permitted under the Orders (including the dollar caps provided in paragraphs 11(b) and 38 thereof), the Loan Parties are authorized and directed to pay fees and expenses allowed and payable, as applicable, by any interim, procedural, or final order of the Bankruptcy Court (that has not been vacated or stayed, unless the stay has been vacated) under Sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable.

8.14. Use of DIP Collateral.

No DIP Collateral, proceeds of DIP Loans, portion of the Carve-Out or any other amounts may be used directly or indirectly by any of the Loan Parties, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor case) or any other person or entity for any of the following purposes (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith):

(a) to seek authorization to obtain Liens or security interests that are senior to, or on a parity with, the DIP Loans (except for the ABL DIP Loans); or

(b) except as provided in the Orders, to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Administrative Agent, the Lenders, the Pre-Petition Term Agent, the Pre-Petition Term Lenders, the Senior ABL Facility Agent, the Senior ABL Facility Lenders, the ABL DIP Agent, the ABL DIP Lenders and any of their controlling persons, affiliates or successors or assigns, and each of the respective officers, directors, employees, agents, attorneys, or advisors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including (A) any claims or causes of action arising under Chapter 5 of the Bankruptcy Code, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Facility Obligations, the DIP Liens hereunder, the DIP Loan Documents, the Pre-Petition Term Obligations, the Pre-Petition Term Facility Documents, the Pre-Petition Term Obligations, the Superpriority Claims, the ABL DIP Facility Documents, the ABL DIP Obligations or the ABL DIP Lien, (D) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the DIP Facility Obligations, the Pre-Petition Term Obligations or the ABL DIP Obligations, (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (1) the Administrative Agent or the Lenders hereunder or under any of the DIP Loan Documents, (2) the Pre-Petition Term Agents or the Pre-Petition Term Lenders any of the Pre-Petition Term Facility Documents or (3) the ABL DIP Agent or the ABL DIP Lenders under any of the ABL DIP Facility Documents (in each case, including claims, proceedings or actions that might prevent, hinder or delay any assertions, enforcements, realizations or remedies on or against the DIP Collateral by any of the Administrative Agent, the Lenders, the Secured Parties, the Pre-Petition Term Agents, the Pre-Petition Term Lenders, the ABL DIP Agent or the ABL DIP Lenders under any of the Pre-Petition Term Facility Documents in accordance with the applicable DIP Loan Documents, Pre-Petition Term Facility Loan Documents, ABL DIP Facility Documents and the Orders, as applicable), or (F) objecting to, contesting, or interfering with, in any way, the Administrative Agent’s, the Collateral Agent’s, the Lenders’ and the Secured Parties’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; provided, however, that no more than \$25,000 in the aggregate of the DIP Collateral, the Carve-Out or proceeds of the DIP Loans may be used by the Committee to investigate such claims and/or Liens.

8.15. Access to TL Deposit Account.

No Loan Party shall withdraw funds from the TL Deposit Account after the occurrence and during the continuance of a Default or Event of Default. The TL Deposit Account shall continue to be subject to the existing control agreement in favor of Cortland Capital Market Services LLC, and withdrawals from such account shall only be used for the permitted purposes described in Subsection 7.10. Under no circumstances may any cash, funds, securities, financial assets or other property held in or credited to the TL Deposit Account or the proceeds thereof held therein or credited thereto be used for any purpose not permitted under the Orders.

SECTION 9

EVENTS OF DEFAULT

9.1. Events of Default.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order of the Bankruptcy Court or any notice to any Credit Party, any of the following from and after the Closing Date shall constitute an “Event of Default”, with the exception of any such event occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying or permits any Loan Party not to comply with the requirements referenced in the subsections below:

(a) The Borrower shall fail to pay any principal of any DIP Loan when due in accordance with the terms hereof (whether at stated maturity, by mandatory prepayment or otherwise); or the Borrower shall fail to pay any interest on any DIP Loan, or any other amount payable hereunder, within two (2) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other DIP Loan Document (or in any amendment, modification or supplement hereto or thereto) or which is contained in any certificate furnished at any time by or on behalf of any Loan Party pursuant to this Agreement or any such other DIP Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Any Loan Party shall default in the payment, observance or performance of any term, covenant or agreement contained in Subsection 7.2(a) or Section 8; or

(d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other DIP Loan Document (other than as provided in clauses (a) through (c) of this Subsection 9.1), and such default shall continue unremedied for a period of 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(e) Except with respect to any Specified Event of Default, any Loan Party or any of its Subsidiaries shall (i) default in (x) any payment of principal of or interest on (A) the the ABL DIP Facility or (B) any Indebtedness (excluding the DIP Loans) in excess of \$2,000,000, or (y) the payment of (A) any Guarantee Obligation in respect of the ABL DIP Facility or (B) any Guarantee Obligation in excess of \$2,000,000 in each case beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee Obligation was created; or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (excluding the DIP Loans) or Guarantee Obligation referred to in clause (i) above or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders

of such Indebtedness or beneficiary or beneficiaries of such Guarantee Obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice or lapse of time if required, such Indebtedness to become due prior to its stated maturity or such Guarantee Obligation to become payable (an “Acceleration”), and such time shall have lapsed and, if any notice (a “Default Notice”) shall be required to commence a grace period or declare the occurrence of an event of default before notice of Acceleration may be delivered, such Default Notice shall have been given and such default shall not have been remedied or waived by or on behalf of such holder or holders; provided that the foregoing shall not apply solely to the Specified Events of Default unless the ABL DIP Agent, Pre-Petition Term Agent or any lender or other secured party under the Senior ABL Facility or the Pre-Petition Term Facility, as applicable, shall exercise any remedies with respect thereto; provided, further that the foregoing shall not apply to any default under Indebtedness existing prior to the Petition Date and which has been accelerated by virtue of the filing of the Chapter 11 Case; or

(f) There shall have occurred an event which has resulted in a Material Adverse Effect; or

(g) (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of either of the Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is in the reasonable opinion of the Administrative Agent likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination pursuant to Section 4041(b) of ERISA, (v) either of the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Administrative Agent is reasonably likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan, or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect; or

(h) [Reserved]; or

(i) (i) Any of the Security Documents shall cease for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof), or any Loan Party which is a party to any such Security Document shall so assert in writing or (ii) the DIP Lien created by any of the Security Documents shall cease to be perfected and enforceable in accordance with its terms or of the same effect as to perfection and priority purported to be created thereby with respect to any significant portion of the DIP Collateral (other than in connection with any termination of such DIP Lien in respect of any DIP Collateral as permitted hereby or by any Security Document) and such failure of such DIP Lien to be perfected and enforceable with such priority shall have continued unremedied for a period of twenty (20) days; or

(j) [Reserved]; or

(k) A Change of Control shall have occurred; or

(l) The occurrence of any of the following in any Chapter 11 Case (each, a "Termination Event"):

(i) For a period in excess of three (3) calendar days, reversal, vacatur or stay of the effectiveness of the Interim Order or the Final Order without the express prior written consent of the Agent (acting at the direction of the Required Lenders);

(ii) Without the written consent of the Agent acting at the direction of the Required Lenders, (A) dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner or other responsible officer with enlarged powers relating to the operation of the business of the Borrower or any Guarantor in any of the Chapter 11 Cases, which dismissal, conversion or appointment shall not have been reversed, stayed or vacated within three (3) calendar days, (B) termination of the exclusive period for the Loan Parties to file a plan of reorganization in the Chapter 11 Cases or the filing of a plan of reorganization in the Chapter 11 Cases other than the Prearranged Chapter 11 Plan, or (C) the Loan Parties shall seek or request the entry of any order to effect any of the events described in subclause (A) of this clause (ii);

(iii) The entry by the Bankruptcy Court of an order granting relief from the automatic stay imposed by Section 362 of the Bankruptcy Code sought by any party that materially adversely affects the Loan Parties' property, including, without limitation, to permit foreclosure or enforcement on the DIP Collateral (subject to customary exceptions, including, without limitation, relief with respect to immaterial assets and insurance programs) without the written consent of the Agent (acting at the direction of the Required Lenders);

(iv) Three (3) Business Days after written notice to the Loan Parties of the failure by the Loan Parties to deliver to the Agent any of the documents or other information required to be delivered pursuant to the Orders when due (during which time the Loan Parties may cure) or any such documents or other information shall contain a misrepresentation of a material fact when made;

(v) Except as set forth herein, three (3) Business Days after the failure by the Loan Parties to observe or perform any of the material terms or provisions contained in the Orders;

(vi) The entry of an order of the Bankruptcy Court granting any lien on or security interest in any of the DIP Collateral that is pari passu with or senior to the DIP Liens held by the Agent on or as security interests in the DIP Collateral, the Adequate Protection Liens, the Superpriority Claims or the Pre-Petition Liens, or the Loan Parties shall seek or request the entry of any such order, except for the

Senior ABL Liens and the ABL DIP Lien on the ABL Collateral or the ABL DIP Collateral, respectively;

(vii) The Loan Parties' creating or permitting to exist any other superpriority claim which is pari passu with or senior to the claims of the Agent and the Lenders, the Adequate Protection Liens, the Superpriority Claims or the Pre-Petition Liens, except for the Carve-Out, the Senior ABL Liens and the ABL DIP Lien on the ABL Collateral or the ABL DIP Collateral, respectively;

(viii) The Loan Parties filing a pleading, or in any way support another party's pleading, seeking to modify or otherwise alter any of the terms and conditions set forth in the Orders without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(ix) The entry of an order of the Bankruptcy Court amending, supplementing or otherwise altering any of the terms and conditions set forth in the Orders without the prior written consent of the Agent (acting at the direction of the Required Lenders);

(x) Any of the Loan Parties uses the DIP Facility for any item other than those set forth in the Budget or the Carve-Out, except as agreed in writing in advance by the Agent (acting at the direction of the Required Lenders);

(xi) Any of the Loan Parties (or any party with the support of any of the Loan Parties) (a) shall file a plan of reorganization in any of the Chapter 11 Cases if the filing of such plan is made without the prior written consent of the Agent (acting at the direction of the Required Lenders) or (b) shall file a plan of reorganization in any of the Chapter 11 Cases that does not propose to indefeasibly repay the DIP Facility Obligations in full in cash, unless otherwise consented to by the Administrative Agent (acting at the direction of the Required Lenders);

(xii) The Loan Parties' existing Chief Restructuring Officer ceases to serve in such capacity or is replaced, unless such replacement is reasonably acceptable to the Required Lenders in their reasonable discretion;

(xiii) Any uninsured judgments are entered with respect to any post-petition liabilities against any of the Loan Parties or any of their respective properties in a combined aggregate amount in excess of \$500,000 unless stayed, vacated or satisfied for a period of twenty (20) calendar days after entry thereof;

(xiv) The failure of the Loan Parties to meet any of the following milestones unless extended or waived within two (2) Business Days by the Administrative Agent and the Required Lenders:

(A) obtaining the Bankruptcy Court's approval of (x) the Interim Order within three (3) days of the Petition Date, and (y) the Final Order within forty-five (45) days after the Petition Date;

(B) obtaining the Bankruptcy Court's confirmation of the Prearranged Chapter 11 Plan by no later than September 22, 2015 (which may be extended by up to forty-five (45) calendar days by the written consent of the Administrative Agent (acting at the direction of the Required Lenders)); and

(C) consummating the plan by no later than October 6, 2015 (which may be extended by up to forty-five (45) calendar days by the written consent of the Administrative Agent (acting at the direction of the Required Lenders)); or

(xv) Any Loan Party asserts a right of subrogation or contribution against any other Loan Party prior to the date upon which all DIP Loans under the DIP Facility have been paid in full and all DIP Loan Commitments have been terminated;

(xvi) Any Loan Party shall seek to sell any of its assets outside the ordinary course of business, unless (i) the proceeds of such sale are used to indefeasibly pay the DIP Facility Obligations in full in cash unless such sale is consented to by the Administrative Agent (acting at the direction of the Required Lenders), or (ii) such sale is pursuant to bidding procedures approved by the Administrative Agent (acting at the direction of the Required Lenders);

(xvii) Any of the Loan Parties (or any party with the support of any of the Loan Parties) shall challenge the validity or enforceability of any of the DIP Loan Documents, the Pre-Petition Original Term Facility Documents or the Pre-Petition Priming Term Facility Documents;

(xviii) Any Loan Party shall make any Pre-Petition Payment (by way of adequate protection or otherwise), unless expressly provided herein or in the Orders or consented to by the Required Lenders; or

(m) The termination of the PSA by any party thereto;

(n) Permitted Variances under the Budget are exceeded for any period of time, subject to the proviso in the covenant contained in Subsection 8.13(a)(f) hereto; and

(o) There shall exist and continue to exist certain materially adverse employee benefit or environmental liabilities that would reasonably be expected to have a Material Adverse Effect, except for such liabilities which are in existence on the Closing Date and are set forth on Schedule 9.1 hereto.

9.2. Remedies Upon an Event of Default. (a) If any Event of Default occurs and is continuing, then, and in any such event, notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without any application, motion or notice, hearing before, or order from, the Bankruptcy Court but subject to the Orders, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, (i) by written notice to the Borrower, declare all of the DIP Loans hereunder, (with

accrued interest thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable, (ii) immediately terminate the Loan Parties' limited use of any cash collateral; (iii) cease making any DIP Loans under the DIP Facility; (iv) freeze monies or balances in the Loan Parties' accounts (and sweep all funds contained in the TL Deposit Account); (v) immediately set-off any and all amounts in accounts maintained by the Loan Parties with the Administrative Agent or the Lenders against the DIP Facility Obligations, or otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Facility Obligations; and (vi) take any other actions or exercise any other rights or remedies permitted under the Orders, the DIP Loan Documents or applicable law to effect the repayment of the DIP Facility Obligations; provided that prior to the exercise of any right in clauses (ii), (v) or (vi) of this Section 9.2(a), the Administrative Agent shall be required to provide five (5) calendar days written notice to the Loan Parties and the Committee of the Administrative Agent's intent to exercise its rights and remedies; provided, further, that neither the Loan Parties, the Committee nor any other party-in-interest shall have the right to contest the enforcement of the remedies set forth in the Orders and the DIP Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable DIP Loan Documents. The Loan Parties shall cooperate fully with the Administrative Agent and the Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

(b) Except as expressly provided above in this Section 9, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

SECTION 10

AGENCY PROVISIONS

10.1. Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Cortland to act on its behalf as the Administrative Agent hereunder and under the other DIP Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other DIP Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the DIP Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the

Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens or DIP Liens on DIP Collateral granted by any of the Loan Parties to secure any of the DIP Facility Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Subsection 10.5 for purposes of holding or enforcing any Lien or DIP Lien on the DIP Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Section 10 and Section 11 (including Subsection 10.7(a), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the DIP Loan Documents) as if set forth in full herein with respect thereto.

10.2. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

10.3. Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other DIP Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other DIP Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other DIP Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any DIP Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other DIP Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is

communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Subsections 11.1 and 9.2) or (ii) in the absence of its own bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other DIP Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other DIP Loan Document or any other agreement, instrument or document, (v) the value or the sufficiency of any DIP Collateral or (vi) the satisfaction of any condition set forth in Section 6 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.4. Reliance by Administrative Agent. The 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. The 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 a DIP Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such DIP Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other DIP Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The 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 Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative

Agent. The 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 and non-appealable judgment that the Administrative Agent acted with bad faith, gross negligence or willful misconduct in the selection of such sub-agents.

10.6. Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States and shall (unless an Event of Default under Subsection 9.1(l) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (iv) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and appoint a successor, subject, unless an Event of Default under Subsection 9.1(l) with respect to the Borrower shall have occurred and be continuing, to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other DIP Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the DIP Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in Subsection 4.13(f) and other than any rights to indemnity payments or other

amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other DIP Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other DIP Loan Documents, the provisions of this Section and Subsection 11.5 shall continue in effect for the benefit of such retiring or removed 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 or removed Administrative Agent was acting as Administrative Agent.

10.7. Indemnity; Reimbursement by Lenders. To the extent that the Borrower or any other Loan Party for any reason fails to indefeasibly pay any amount required under Subsection 11.5 to be paid by it to the Administrative Agent (or any sub-agent thereof) or the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay ratably according to their respective outstanding DIP Loans on the date on which the applicable unreimbursed expense or indemnity payment is sought under this Subsection 10.7 such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this Subsection 10.7 are subject to the provisions of Subsection 4.8.

(a) Any Agent shall be fully justified in failing or refusing to take any action hereunder and under any other DIP Loan Document (except actions expressly required to be taken by it hereunder or under the DIP Loan Documents) unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

(b) All amounts due under this Subsection 10.7 shall be payable not later than three Business Days after demand therefor. The agreements in this Subsection 10.7 shall survive the payment of the DIP Loans and all other amounts payable hereunder.

10.8. Collateral Matters. (a) Each Lender authorizes and directs the Administrative Agent and the Collateral Agent to enter into any Security Documents for the benefit of the Lenders and the other Secured Parties. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Administrative Agent, the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement, the Security Documents, the Orders, and the exercise by the Agents or the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on

behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any applicable DIP Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the DIP Collateral granted pursuant to the Security Documents. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any DIP Collateral for the DIP Loans unless instructed to do so by the Collateral Agent, it being understood and agreed that such rights and remedies may be exercised only by the Collateral Agent. The Collateral Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any guarantee by any Subsidiary (including extensions beyond the Closing Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date) where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Security Documents.

(b) The Lenders hereby authorize each Agent, in each case at its option and in its discretion, (A) to release any Lien granted to or held by such Agent upon any DIP Collateral (i) upon termination of the DIP Loan Commitments and payment and satisfaction of all of the DIP Facility Obligations under the DIP Loan Documents at any time arising under or in respect of this Agreement or the DIP Loan Documents or the transactions contemplated hereby or thereby that are then due and unpaid, (ii) constituting property being sold or otherwise disposed of (to Persons other than a Loan Party) upon the sale or other disposition thereof, (iii) if approved, authorized or ratified in writing by the Required Lenders (or such greater amount, to the extent required by Subsection 11.1) or (iv) as otherwise may be expressly provided in the relevant Security Documents and (B) to subordinate any Lien on any property granted to or held by such Agent, as the case may be under any DIP Loan Document to the holder of any Permitted Lien described in clause (c), (d), (e), (f), (h), (j), or (l) of the definition thereof. Upon request by any Agent, at any time, the Lenders will confirm in writing any Agent's authority to release particular types or items of DIP Collateral pursuant to this Subsection 10.8.

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as the case may be, in each case at its option and in its discretion, to enter into any amendment, amendment and restatement, restatement, waiver, supplement or modification, and to make or consent to any filings or to take any other actions, in each case as contemplated by Subsection 11.1. Upon request by any Agent, at any time, the Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority under this Subsection 10.8(c).

(d) No Agent shall have any obligation whatsoever to the Lenders to assure that the DIP Collateral exists or is owned by the Borrower or any of its Subsidiaries or is cared for, protected or insured or that the DIP Liens granted to any Agent herein or pursuant hereto 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 the Agents in this Subsection 10.8 or in any of the Security Documents, it being understood and agreed by the Lenders that in respect of the DIP Collateral, or any act, omission or event related thereto, each Agent may act in any manner it may deem appropriate, in its sole

discretion, given such Agent's own interest in the DIP Collateral as a Lender and that no Agent shall have any duty or liability whatsoever to the Lenders, except for its bad faith, gross negligence or willful misconduct.

(e) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by and in accordance with either Subsection 11.1 or 11.17, as applicable, with the written consent of the Agent party thereto and the Loan Party party thereto.

(f) The Collateral Agent may, and hereby does, appoint the Administrative Agent as its agent for the purposes of holding any DIP Collateral and/or perfecting the Collateral Agent's security interest therein and for the purpose of taking such other action with respect to the collateral as such Agents may from time to time agree.

10.9. Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other DIP Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.10. [Reserved].

10.11. Taxes. Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Non-Excluded Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent against any Taxes attributable to such Lender's failure to comply with the provisions of Subsection 11.6(b)(vi) relating to the maintenance of a Participant Register and (z) the Administrative Agent against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any DIP Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other DIP Loan Document against any amount due to the Administrative Agent under this Subsection 10.11.

10.12. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law, including the Chapter 11 Cases, or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any DIP Loan shall then be due and payable as herein expressed or by

declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the DIP Loans and all other DIP Facility Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Subsections 4.5 and 11.5) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Subsections 4.5 and 11.5.

Nothing contained herein shall be deemed to (x) require the Administrative Agent to file or prove any claim in the Chapter 11 Cases, or (y) authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the DIP Facility Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.13. Application of Proceeds. The Lenders, the Administrative Agent and the Collateral Agent agree, as among such parties, as follows: subject to the terms of the Orders, to the extent applicable, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by the Administrative Agent, the Collateral Agent or any Lender on account of amounts then due and outstanding under any of the DIP Loan Documents shall, except as otherwise expressly provided herein, be applied as follows: first, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of the Administrative Agent and the Collateral Agent in connection with enforcing the rights of the Agents and the Lenders under the DIP Loan Documents (including all expenses of sale or other realization of or in respect of the DIP Collateral and any sums advanced to the Collateral Agent or to preserve its security interest in the DIP Collateral), second, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of each of the Lenders in connection with enforcing such Lender's rights under the DIP Loan Documents, third, to pay interest on DIP Loans then outstanding; and fourth, to pay the surplus, if any, to

whomever may be lawfully entitled to receive such surplus. To the extent any amounts available for distribution pursuant to clause “third” or “fourth” above are insufficient to pay all obligations described therein in full, such moneys shall be allocated pro rata among the applicable Secured Parties in proportion to the respective amounts described in the applicable clause at such time.

SECTION 11

MISCELLANEOUS

11.1. Amendments and Waivers. (a) Neither this Agreement nor any other DIP Loan Document, nor any terms hereof or thereof, may be amended, supplemented, modified or waived except in accordance with the provisions of this Subsection 11.1. The Required Lenders may (together with notice to the Administrative Agent, which notice shall be a condition to effectiveness to such amendment or waiver), or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (x) enter into with the respective Loan Parties hereto or thereto, as the case may be, written amendments, supplements or modifications hereto and to the other DIP Loan Documents for the purpose of adding any provisions to this Agreement or to the other DIP Loan Documents or changing, in any manner the rights or obligations of the Lenders or the Loan Parties hereunder or thereunder or (y) waive at any Loan Party’s request, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other DIP Loan Documents or any Default or Event of Default and its consequences; provided, however, that amendments pursuant to Subsections 11.1(d) may be effected without the consent of the Required Lenders to the extent provided therein; provided further, that no such waiver and no such amendment, supplement or modification shall:

(i) (A) reduce or forgive the amount or extend the scheduled date of maturity of any DIP Loan or of any scheduled installment thereof (including extending the Maturity Date) without the written consent of each Lender directly affected thereby, (B) reduce the stated rate of any interest, commission or fee payable hereunder (other than as a result of any waiver of the applicability of any post-default increase in interest rates) without the written consent of each Lender directly affected thereby, (C) postpone any date fixed by this Agreement or any other DIP Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other DIP Loan Document without the written consent of each Lender directly affected thereby or (D) increase or extend any Lender’s DIP Loan Commitment without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory repayment of the DIP Loans of all Lenders shall not constitute an extension of the scheduled date of maturity, any scheduled installment, or the scheduled date of payment of the DIP Loans of any Lender or an increase in the DIP Loan Commitment of any Lender);

(ii) amend, modify or waive any provision of this Subsection 11.1(a) or reduce the percentage specified in the definition of “Required Lenders,” or

consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other DIP Loan Documents (other than pursuant to Subsection 8.7 or 11.6(a)), in each case without the written consent of all the Lenders;

(iii) release Guarantors accounting for all or substantially all of the value of the Guarantee of the DIP Facility Obligations pursuant to the relevant Security Document, or, in the aggregate (in a single transaction or a series of related transactions), all or substantially all of the DIP Collateral without the consent of all of the Lenders, except as expressly permitted hereby or by any Security Document (as such documents are in effect on the date hereof or, if later, the date of execution and delivery thereof in accordance with the terms hereof);

(iv) require any Lender to make DIP Loans having an Interest Period of longer than six (6) months or shorter than one month without the consent of such Lender;

(v) amend, modify or waive any provision of Section 10 without the written consent of the Agents;

(vi) waive any condition set forth in Subsection 6.1 without the written consent of each Lender, except to the extent otherwise provided for therein; or

(vii) amend, modify or waive the order of application of payments set forth in Subsections 4.4(c), 4.8(a), 10.13 or 11.7, in each case without the consent of all the Lenders.

(b) Any waiver and any amendment, supplement or modification pursuant to this Subsection 11.1 shall apply to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents and all future holders of the DIP Loans. In the case of any waiver, each of the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other DIP Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(c) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to amend, supplement, waive or otherwise modify any provision of, any ABL DIP Facility Document or Senior ABL Facility Document in a manner adverse to the Administrative Agent or Lenders to the extent that any such amendment, supplement, waiver or modification could reasonably be expected to be adverse to the Lenders in any material respect or to have a Material Adverse Effect.

(d) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the commitment of any Defaulting Lender may not be increased or

extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(e) [Reserved].

(f) [Reserved].

(g) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by Subsection 11.1 with the written consent of the Agent party thereto and the Loan Party party thereto.

(h) If, in connection with any proposed change, waiver, discharge or termination of or to any of the provisions of this Agreement and/or any other DIP Loan Document as contemplated by Subsection 11.1(a), the consent of each Lender or each affected Lender, as applicable, is required and the consent of the Required Lenders at such time is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (each such Lender, a “Non-Consenting Lender”) then the Administrative Agent may, on notice to the Non-Consenting Lender, replace such Non-Consenting Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Subsection 11.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to the applicable change, waiver, discharge or termination of this Agreement and/or the other DIP Loan Documents; and provided, further, that all obligations of the Borrower owing to the Non-Consenting Lender relating to the DIP Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender concurrently with such Assignment and Acceptance. In connection with any such replacement under this Subsection 11.1(g), if the Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to the Non-Consenting Lender relating to the DIP Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Non-Consenting Lender, and the Administrative Agent shall record such assignment in the Register.

11.2. Notices. (a) All notices, requests, and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when received if mailed by certified or registered mail, or, in the case of telecopy

notice, when sent, or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows in the case of the Borrower, the Administrative Agent and the Collateral Agent, and as set forth in Schedule A in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the DIP Loans:

The Borrower

Boomerang Tube, LLC
14567 N. Outer Forty Road, 5th Floor
Chesterfield, MO 63017
Attention: General Counsel or Chief Financial Officer
Facsimile: (636) 534-5657
Telephone: (636) 534-5656 and (636) 534-5575
Electronic mail: mcullen@boomerangtube.com
and bhorsfield@boomerangtube.com

With copies (which shall not constitute notice) to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attention: Paul D. Brusiloff, Esq. and My Chi To, Esq.
Facsimile: (212) 521-7015
Telephone: (212) 909-6000

The Administrative Agent/the Collateral Agent:

Administrative Agent's Office:
Cortland Capital Market Services LLC
225 W. Washington St., 21st Floor
Chicago, Illinois 60606
Attention: Ryan Morick and Legal Department
Telephone: 312-564-5072
Telecopier: 312-376-0751
Electronic Mail:
ryan.morick@cortlandglobal.com and
legal@cortlandglobal.com

With copies (which shall not constitute notice) to:

King & Spalding LLP
1185 Avenue of the Americas
New York, New York 10036
Attention: Michael C. Rupe, Esq. and Ellen M. Snare, Esq.
Telephone: (212) 556-2135
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provided that any notice, request or demand to or upon the Administrative Agent or the Lenders pursuant to Subsections 4.2, 4.4 or 4.8 shall not be effective until received.

(b) Without in any way limiting the obligation of any Loan Party and its Subsidiaries to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may prior to receipt of written confirmation act without liability upon the basis of such telephonic notice, believed by the Administrative Agent in good faith to be from a Responsible Officer of a Loan Party.

(c) DIP Loan Documents may be transmitted and/or signed by facsimile or other electronic means (i.e., a “pdf” or “tif”). The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on each Loan Party, each Agent and each Lender. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or other electronic document or signature.

(d) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including electronic mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes (i) 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) and (ii) notices or communications posted to an Internet or intranet website (including the Borrower’s website on the Internet at the website address listed on Schedule 7.2(d) (or such other website address as the Borrower may specify by written notice to the Administrative Agent from time to time)) shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(e) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY

ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, “Agent Parties”) have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials through the Internet.

(f) Each of the Borrower and the Administrative Agent, may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States federal and state securities laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(g) The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower or any other 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. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.3. No Waiver; Cumulative Remedies; Enforcement. No failure to exercise and no delay in exercising, on the part of any Agent, any Lender or any Loan Party, any right, remedy, power or privilege hereunder or under the other DIP Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other DIP Loan Document, the authority to enforce rights and remedies hereunder and under the other DIP Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Subsection 9.2 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its

benefit (solely in its capacity as Administrative Agent) hereunder and under the other DIP Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Subsection 11.7 (subject to the terms of Subsection 11.7) or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other DIP Loan Documents, then (x) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Subsection 9.2 and (y) in addition to the matters set forth in clauses (iii) and (iv) of the preceding proviso and subject to Subsection 11.7, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.4. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other DIP Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Extension of Credit, and shall continue in full force and effect as long as any DIP Loan or any other DIP Facility Obligation shall remain unpaid or unsatisfied.

11.5. Payment of Expenses and Taxes; Indemnity. Subject to the investigation rights set forth in Subsection 8.14(b) hereof, the Borrower and the Guarantors, jointly and severally, agree (a) to pay or reimburse the Administrative Agent and the Collateral Agent (for purposes of this Subsection 11.5, collectively the “Indemnified Agents”), and the Lenders (for purposes of this Subsection 11.5, collectively the “Indemnified Lenders”) and their respective Related Parties for all reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses (1) incurred in connection with (i) the syndication of the DIP Facility and the development, preparation, execution and delivery of, and any amendment, supplement, waiver or modification to, this Agreement and the other DIP Loan Documents and any other documents prepared in connection herewith or therewith (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the consummation and administration of the transactions (including the syndication of the DIP Loan Commitments) contemplated hereby and thereby, (iii) incurred in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuit, investigation, claim or other proceeding relating to any of the foregoing and (iv) efforts to monitor the DIP Loans and verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the DIP Collateral, (2) of King & Spalding LLP, one firm of local counsel in all relevant jurisdictions, and of consultants, advisors, appraisers and auditors and (3) of FTI pursuant to the FTI Engagement Letter, (b) to pay or reimburse each Indemnified Lender, each Indemnified Agent, their respective Affiliates and professional advisors for all their reasonable and documented (in summary form) out-of-pocket fees, costs, disbursements and expenses (including (and limited, in the case of counsel, to) all reasonable fees, costs, disbursements and expenses of one firm of outside counsel and, to the extent necessary, one firm of local counsel engaged by the applicable Agent in connection therewith) in connection with the enforcement or preservation of any rights under this Agreement (including

its rights under this Subsection 11.5), the other DIP Loan Documents and any other documents prepared in connection herewith or therewith, or in connection with any workout, restructuring or negotiations in respect of the DIP Loans including the reasonable fees and disbursements of counsel to the Indemnified Agents and the Indemnified Lenders, (c) to pay, indemnify, or reimburse each Indemnified Lender and each Indemnified Agent for, and hold each Indemnified Lender and each Indemnified Agent harmless from, any and all recording and filing fees, and any and all stamp, court, documentary, excise, intangible and other similar Taxes, if any, which may be payable or determined to be payable in connection with the execution, delivery, enforcement, or registration of, the receipt or perfection of a security interest under, the consummation or administration of any of the transactions contemplated by, any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other DIP Loan Documents and any such other documents, and any and all liabilities with respect to, or resulting from the delay in paying, any of the foregoing fees or Taxes and (d) to pay, indemnify or reimburse each Indemnified Lender, each Indemnified Agent (and any sub-agent thereof) and each Related Party of any of the foregoing Persons (each, an “Indemnitee”) for, and hold each Indemnitee harmless from and against, any and all other liabilities, obligations, losses, claims, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnities and its Related Parties arising out of, in connection with, as a result of or with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other DIP Loan Documents and any such other documents or instrument contemplated hereby or thereby, including any of the foregoing relating to the use of proceeds of the DIP Loans, the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Borrower or any of its Subsidiaries or any of the property of the Borrower or any of its Subsidiaries, of any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party 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** (all the foregoing in this clause (d), collectively, the “Indemnified Liabilities”), provided that the Borrower shall not have any obligation hereunder to any Indemnified Agent (or any sub-agent thereof) or any Indemnified Lender (or any Related Party of any such Indemnified Agent (or any sub-agent thereof) or Indemnified Lender) with respect to Indemnified Liabilities arising from (i) the bad faith, gross negligence or willful misconduct of any such Indemnified Agent (or any sub-agent thereof) or Indemnified Lender (or any Related Party of any such Indemnified Agent (or any sub-agent thereof) or Indemnified Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision, (ii) a material breach of the Senior ABL Facility Documents, the ABL DIP Facility Documents, the Pre-Petition Term Facility Documents, or the DIP Loan Documents, as applicable, by any such Indemnified Agent (or any sub-agent thereof) or Indemnified Lender (or any Related Party of any such Indemnified Agent (or any sub-agent thereof) or Indemnified Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision or (iii) claims against such Indemnitee or any Related Party brought by any other Indemnitee that do not involve claims

against any Indemnified Agent in its capacity as such. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other DIP Loan Document or the Senior ABL Facility Documents, the ABL DIP Facility Documents, the Pre-Petition Term Facility Documents, as applicable, any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any DIP Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement, the other DIP Loan Documents, the Senior ABL Facility Documents, the ABL DIP Facility Documents or the Pre-Petition Term Facility Documents, as applicable, or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the bad faith, gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction. All amounts due under this Subsection 11.5 shall be payable not later than 30 days after written demand therefor. Statements reflecting amounts payable by the Loan Parties pursuant to this Subsection 11.5 shall be submitted to the address of the Borrower set forth in Subsection 11.2, or to such other Person or address as may be hereafter designated by the Borrower in a notice to the Administrative Agent. Notwithstanding the foregoing, except as provided in Subsections 11.5(b) and (c) above or Subsection 4.11, the Borrower shall have no obligation under this Subsection 11.5 to any Indemnitee with respect to any tax, levy, impost, duty, charge, fee, deduction or withholding imposed, levied, collected, withheld or assessed by any Governmental Authority. The agreements in this Subsection 11.5 shall survive repayment of the DIP Loans and all other amounts payable hereunder.

11.6. Successors and Assigns; Participations and Assignments. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) other than in accordance with Subsection 8.7, the Borrower shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Subsection 11.6. Nothing in this Agreement, expressed or implied, shall be construed to confer, or shall confer, upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (c) of this Subsection and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in Subsection 11.6(b)(ii) below, any Lender may, in the ordinary course of business and in accordance with applicable law, assign (other than to Borrower, Affiliate of Borrower, Access, any Affiliate of Access or any natural person) to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including its DIP Loans, pursuant to an Assignment and Acceptance) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) [Reserved]; and

(B) the Administrative Agent (such consent not to be unreasonably withheld); provided that no consent of the Administrative Agent shall be required for an assignment to a Lender or an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's DIP Loan Commitments, the amount of the DIP Loan Commitments or DIP Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an amount of an integral multiple of \$1,000,000 unless the Administrative Agent otherwise consents, provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 (unless waived by the Administrative Agent in any given case in its sole discretion); provided that for concurrent assignments to two or more Approved Funds such assignment fee shall only be required to be paid once in respect of and at the time of such assignments;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire;

(D) no assignment shall be made to any Defaulting Lender or any of its Subsidiaries.

For the purposes of this Subsection 11.6, the term "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 and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and

obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of (and bound by any related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5, and bound by its continuing obligations under Subsection 11.16); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Subsection 11.6 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 clause (c) of this Subsection 11.6.

(iv) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of DIP Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all DIP Loans in accordance with its pro rata share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(v) The Borrower hereby designates the Administrative Agent, and the Administrative Agent agrees, to serve as the Borrower's agent, solely for purposes of this Subsection 11.6, to maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the DIP Loan Commitments of, and interest and principal amount of the DIP Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register

shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(vi) Each Lender that sells a participation shall, acting for itself and, solely for this purpose, as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the DIP Loans or other obligations under the DIP Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any DIP Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and a Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(vii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Subsection 11.6(b) and any written consent to such assignment required by Subsection 11.6(b), the Administrative Agent shall accept such Assignment and Acceptance, record the information contained therein in the Register and give prompt notice of such assignment and recordation to the Borrower. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(viii) On or prior to the effective date of any assignment pursuant to this Subsection 11.6(b), the assigning Lender shall surrender any outstanding Notes held by it all or a portion of which are being assigned. Any Notes surrendered by the assigning Lender shall be returned by the Administrative Agent to the Borrower.

Notwithstanding the foregoing provisions of this Subsection 11.6(b) or any other provision of this Agreement, if the Borrower shall have consented thereto in writing in its sole discretion, the Administrative Agent shall have the right, but not the obligation, to effectuate assignments of DIP Loans and DIP Loan Commitments via an electronic settlement system acceptable to Administrative Agent and the Borrower as designated in writing from time to time to the Lenders by Administrative Agent (the "Settlement Service"). At any time when the Administrative Agent elects, in its sole discretion, to implement such

Settlement Service, each such assignment shall be effected by the assigning Lender and proposed Assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be subject to the prior written approval of the Borrower and shall be consistent with the other provisions of this Subsection 11.6(b). Each assigning Lender and proposed Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of DIP Loans and DIP Loan Commitments pursuant to the Settlement Service. Assignments and assumptions of DIP Loans and DIP Loan Commitments shall be effected by the provisions otherwise set forth herein until the Administrative Agent notifies the Lenders of the Settlement Service as set forth herein. The Borrower may withdraw its consent to the use of the Settlement Service at any time upon notice to the Administrative Agent, and thereafter assignments and assumptions of the DIP Loans and DIP Loan Commitments shall be effected by the provisions otherwise set forth herein.

Furthermore, no Assignee, which as of the date of any assignment to it pursuant to this Subsection 11.6(b) would be entitled to receive any greater payment under Subsections 4.10, 4.11, 4.12 or 11.5 than the assigning Lender would have been entitled to receive as of such date under such Subsections with respect to the rights assigned, shall, notwithstanding anything to the contrary in this Agreement, be entitled to receive such greater payments unless the assignment was made after an Event of Default under Subsection 9.1(a) or (f) has occurred and is continuing or the Borrower has expressly consented in writing to waive the benefit of this provision at the time of such assignment.

(c) (i) Any Lender may, in the ordinary course of its business and in accordance with applicable law, without the consent of the Borrower or the Administrative Agent, sell participations (other than to any Defaulting Lender or a natural person) to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its DIP Loan Commitments and the DIP Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) such Lender shall remain the holder of any such DIP Loan for all purposes under this Agreement and the other DIP Loan Documents and (D) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Subsection 10.7(a) without regard to the existence of any participation. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the second proviso to the second sentence of Subsection 11.1(a) and (2) directly affects such Participant. Subject to Subsection 11.6(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of (and shall have the related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Subsection 11.6(b).

To the extent permitted by law, each Participant also shall be entitled to the benefits of Subsection 11.7(b) as though it were a Lender, provided that such Participant shall be subject to Subsection 11.7(a) as though it were a Lender.

(ii) No Loan Party shall be obligated to make any greater payment under Subsection 4.10, 4.11 or 11.5 than it would have been obligated to make in the absence of any participation, unless the sale of such participation is made with the prior written consent of the Borrower and the Borrower expressly waives the benefit of this provision at the time of such participation. Any Participant that is not incorporated under the laws of the United States of America or a state thereof shall not be entitled to the benefits of Subsection 4.11 unless such Participant complies with Subsection 4.11(b) and provides the forms and certificates referenced therein to the Lender that granted such participation.

(d) Any Lender, without the consent of the Borrower or the Administrative Agent, may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Subsection 11.6 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute (by foreclosure or otherwise) any such pledgee or Assignee for such Lender as a party hereto.

(e) In connection with any assignment or participation made to any Assignee or Participant, the Borrower shall be entitled to request and receive such information and assurances as it may reasonably request from any Lender or any Assignee or Participant to determine whether any filing with any Governmental Authority or qualification of any DIP Loan or Note under the laws of any jurisdiction is required or whether any assignment or participation is otherwise in accordance with applicable law.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) This Agreement, the other DIP Loan Documents, and all Liens and DIP Liens and other rights and privileges created hereby or pursuant hereto or to any other DIP Loan Document shall be binding upon each Loan Party, the estate of each Loan Party, and any trustee, other estate representative or any successor in interest of any Loan Party in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other DIP Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Administrative Agent and the Lenders and their respective assigns, transferees and endorsees. The Liens and DIP Liens created by this Agreement and the other DIP Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the

Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any DIP Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its Liens or DIP Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other DIP Loan Documents without the prior express written consent of the Administrative Agent and the Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Administrative Agent and the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, the Administrative Agent and the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other DIP Loan Documents.

Notwithstanding the foregoing provisions of this Subsection 11.6, nothing in this Subsection 11.6 is intended to or should be construed to limit the Borrower's right to prepay the DIP Loans as provided hereunder, including under Subsection 4.4.

11.7. Sharing of Payments by Lenders; Set-off. (a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (i) DIP Facility Obligations due and payable to such Lender hereunder and under the other DIP Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such DIP Facility Obligations due and payable to such Lender at such time to (y) the aggregate amount of the DIP Facility Obligations due and payable to all Lenders hereunder and under the other DIP Loan Documents at such time) of payments on account of the DIP Facility Obligations due and payable to all Lenders hereunder and under the other DIP Loan Documents at such time obtained by all the Lenders at such time or (ii) DIP Facility Obligations owing (but not due and payable) to such Lender hereunder and under the other DIP Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such DIP Facility Obligations owing (but not due and payable) to such Lender at such time to (y) the aggregate amount of the DIP Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the DIP Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other DIP Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the DIP Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of DIP Facility Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Subsection shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its DIP Loans any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Subsection shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Loan Party rights of setoff 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.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon the occurrence of an Event of Default to set-off and appropriate and apply against any amount then due and payable by the Borrower any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower or any Loan Party; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Subsection 2.9 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the DIP Facility Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application.

11.8. Judgment. (a) The obligations of the Loan Parties hereunder and under the other DIP Loan Documents to make payments in a specified currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by a Loan Party of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another DIP Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other currency other than the Obligation Currency (such other currency being hereinafter in this Subsection 11.8 referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of any other jurisdiction that will give effect to such conversion being

made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Subsection 11.8 being hereinafter in this Subsection 11.8 referred to as the “Judgment Conversion Date”).

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Subsection 11.8(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency that could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Subsection 11.8(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the DIP Loan Documents.

(c) The term “rate of exchange” in this Subsection 11.8 means the rate of exchange at which the Administrative Agent, on the relevant date at or about 12:00 noon (New York time), would be prepared to sell, in accordance with its normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

11.9. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of such counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be delivered to the Borrower and the Administrative Agent.

11.10. Severability. If any provision of this Agreement or the other DIP Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other DIP Loan Documents shall not be affected or impaired thereby and (ii) 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. Without limiting the foregoing provisions of this Subsection 11.10, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.11. Integration. This Agreement and the other DIP Loan Documents represent the entire agreement of each of the Loan Parties party hereto, the Administrative Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any of the Loan Parties party hereto, the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other DIP Loan Documents. This Agreement and the other DIP Loan Documents

supersede any and all previous agreements and understandings, oral or written, relating to the matters hereof.

11.12. Governing Law. THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER DIP LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT GOVERNED BY THE BANKRUPTCY CODE.

11.13. Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other DIP Loan Documents to which it is a party to the exclusive general jurisdiction of the Supreme Court of the State of New York for the County of New York (the "New York Supreme Court"), and the United States District Court for the Southern District of New York (the "Federal District Court," and together with the New York Supreme Court, the "New York Courts") and appellate courts from either of them except to the extent that the provisions of the Bankruptcy Code are applicable and specifically conflict with the foregoing; provided that nothing in this Agreement shall be deemed or operate to preclude (i) any Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the DIP Collateral or any other security for the DIP Facility Obligations (in which case any party shall be entitled to assert any claim or defense, including any claim or defense that this Subsection 11.13 would otherwise require to be asserted in a legal action or proceeding in a New York Court), or to enforce a judgment or other court order in favor of the Administrative Agent or the Collateral Agent, (ii) any party from bringing any legal action or proceeding in any jurisdiction for the recognition and enforcement of any judgment and (iii) if all such New York Courts decline jurisdiction over any Person, or decline (or in the case of the Federal District Court, lack) jurisdiction over any subject matter of such action or proceeding, a legal action or proceeding may be brought with respect thereto in another court having jurisdiction.

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower, the applicable Lender or the Administrative Agent, as the case may be, at the address specified in Subsection 11.2 or at such other address of which the Administrative Agent, any such Lender and the Borrower shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or (subject to clause (a) above) shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Subsection 11.13 any consequential or punitive damages.

Notwithstanding any other provision of this Subsection 11.13, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this agreement or the other DIP Loan Documents.

11.14. No Advisory or Fiduciary Responsibilities. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other DIP Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other DIP Loan Documents; (ii) (A) the Administrative Agent and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other DIP Loan Documents; and (iii) the Administrative Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.15. Waiver Of Jury Trial. EACH OF THE BORROWER, THE AGENTS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY NOTES OR ANY OTHER DIP LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16. Confidentiality. (a) Each Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (i) to any Agent or any other Lender, (ii) to any Transferee, or prospective Transferee or any creditor or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations which agrees to comply with the provisions of this Subsection 11.16 pursuant to a written instrument (or electronically recorded agreement from any Person listed above in this clause (ii), in respect to any electronic information (whether posted or otherwise distributed on any Platform)) for the benefit of the Borrower (it being understood that each relevant Lender shall be solely responsible for obtaining such instrument (or such electronically recorded agreement)), (iii) to its Affiliates and the employees, officers, partners, directors, agents, attorneys, accountants and other professional advisors of it and its Affiliates, provided that such Lender shall inform each such Person of the agreement under this Subsection 11.16 and take reasonable actions to cause compliance by any such Person referred to in this clause (iii) with this agreement (including, where appropriate, to cause any such Person to acknowledge its agreement to be bound by the agreement under this Subsection 11.16), (iv) upon the request or demand of any Governmental Authority having jurisdiction over such Lender or its affiliates or to the extent required in response to any order of any court or other Governmental Authority or as shall otherwise be required pursuant to any Requirement of Law, provided that, other than with respect to any disclosure to any bank regulatory authority, such Lender shall, unless prohibited by any Requirement of Law, notify the Borrower of any disclosure pursuant to this clause (iv) as far in advance as is reasonably practicable under such circumstances, (v) which has been publicly disclosed other than in breach of this Agreement, (vi) in connection with the exercise of any remedy hereunder, under any DIP Loan Document or under any Interest Rate Agreement, (vii) in connection with periodic regulatory examinations and reviews conducted by the National Association of Insurance Commissioners or any Governmental Authority having jurisdiction over such Lender or its affiliates (to the extent applicable), (viii) in connection with any litigation to which such Lender (or, with respect to any Interest Rate Agreement, any Affiliate of any Lender party thereto) may be a party subject to the proviso in clause (iv) above, (ix) if, prior to such information having been so provided or obtained, such information was already in an Agent's or a Lender's possession on a non-confidential basis without a duty of confidentiality to the Borrower being violated, (x) to any other party hereto, and (xi) with the consent of the Borrower. In addition, the Administrative Agent may disclose (i) the existence of this Agreement, the global amount, currency and maturity date of the DIP Facility hereunder, and the legal name, country of domicile and jurisdiction of organization of the Borrower, to (i) the CUSIP Bureau and other similar market data collectors or service providers to the lending industry, provided that either such information shall have been previously made publicly available by the Borrower, or the Administrative Agent shall have obtained the written consent of the Borrower (such consent not to be unreasonably withheld or delayed), prior to making such disclosure, and (ii) information about this Agreement to service providers to the Administrative Agent to the extent customary in connection with the administration and management of this Agreement, the other DIP Loan

Documents, the DIP Loan Commitments and the DIP Loans, provided that any such Person is advised of and agrees to be bound by the provisions of this Subsection 11.16 and the Administrative Agent takes reasonable actions to cause such Person to comply herewith. Notwithstanding any other provision of this Agreement, any other DIP Loan Document or any Assignment and Acceptance, the provisions of this Subsection 11.16 shall survive with respect to each Agent and Lender until the second anniversary of such Agent or Lender ceasing to be an Agent or a Lender, respectively. For purposes of this Subsection, “Information” means all information provided to any Agent or Lender by or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or, any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of information as provided in this Subsection 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.

(b) Each Lender acknowledges that any such information referred to in Subsection 11.16(a), and any information (including requests for waivers and amendments) furnished by the Borrower or the Administrative Agent pursuant to or in connection with this Agreement and the other DIP Loan Documents, may include material non-public information concerning the Borrower, the other Loan Parties and their respective Affiliates or their respective securities. Each Lender represents and confirms that such Lender has developed compliance procedures regarding the use of material non-public information; that such Lender will handle such material non-public information in accordance with those procedures and applicable law, including United States federal and state securities laws; and that such Lender has identified to the Administrative Agent a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law.

11.17. [Reserved].

11.18. USA Patriot Act Notice. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify, and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Patriot Act.

11.19. Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Acceptance or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping

system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the date first written above.

BOOMERANG TUBE, LLC

By: _____
Name:
Title:

AGENT AND LENDERS:

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

[_____] ,
as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____] ,
as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT 2

BUDGET

Boomerang Tube - Weekly Cash Flow

(\$ in '000's, except per ton data)	06/12/15 1	06/19/15 2	06/26/15 3	07/03/15 4	07/10/15 5	07/17/15 6	07/24/15 7	07/31/15 8	08/07/15 9	08/14/15 10	08/21/15 11	08/28/15 12	09/04/15 13	09/11/15 14	Emergence Costs	Total
Receipts	1,168	1,321	1,416	1,784	3,021	3,021	3,021	3,021	3,043	3,043	3,043	3,043	3,043	4,036	0	37,021
Operating Disbursements	11,363	5,064	4,127	4,127	3,958	4,229	3,958	3,958	3,182	3,453	3,182	3,182	3,182	4,846	3,319	65,132
Payroll, Healthcare and Other Benefits	1,235	330	735	275	735	330	735	375	330	745	330	745	275	745	1,000	8,920
Utility Deposit (Credit)	1,000	0	0	0	0	0	0	0	0	0	0	0	0	(1,000)	0	0
Capital Expenditures	112	112	112	163	0	0	0	0	200	200	200	200	200	0	0	1,500
Professional Fees:	813	813	813	813	288	288	288	288	230	230	230	230	230	0	5,781	11,331
Other Restructuring	0	0	0	0	0	0	0	0	0	0	0	0	0	0	239	239
Debt Service - Fees, Interest & Principal	1,474	353	16	116	15	355	15	443	15	0	361	15	564	313	0	4,056
Total Disbursements	15,997	6,671	5,804	5,494	4,996	5,202	4,996	5,064	3,957	4,628	4,302	4,372	4,450	4,904	10,339	91,178
Net Cash Flow	(14,829)	(5,350)	(4,388)	(3,710)	(1,976)	(2,181)	(1,976)	(2,043)	(915)	(1,585)	(1,260)	(1,330)	(1,408)	(868)	(10,339)	(54,157)
Cumulative Net Cash Flow	(14,829)	(20,179)	(24,567)	(28,276)	(30,252)	(32,433)	(34,409)	(36,452)	(37,367)	(38,952)	(40,212)	(41,542)	(42,949)	(43,818)	(54,157)	
TL DIP																
Beginning Balance	6,572	41,572	41,572	41,572	41,572	41,572	55,000	55,000	55,000	55,000	60,000	60,000	60,000	60,000	60,000	60,000
Advance	35,000	0	0	0	0	13,428	0	0	0	5,000	0	0	0	0	0	0
Ending Balance	41,572	41,572	41,572	41,572	41,572	55,000	55,000	55,000	55,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
ABL DIP																
Beginning Balance	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	34,987	34,987
Additional Borrowing / (Repayments)	0	0	0	0	0	0	0	0	0	0	0	0	0	2,229	0	0
Ending Balance	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	34,987	34,987	34,987
Cash																
Beginning Balance	0	20,171	14,821	10,433	6,724	4,748	15,995	14,019	11,976	11,061	14,476	13,216	11,887	10,479	11,839	11,839
Change in Cash	20,171	(5,350)	(4,388)	(3,710)	(1,976)	11,247	(1,976)	(2,043)	(915)	3,415	(1,260)	(1,330)	(1,408)	1,361	(10,339)	(10,339)
Ending Balance	20,171	14,821	10,433	6,724	4,748	15,995	14,019	11,976	11,061	14,476	13,216	11,887	10,479	11,839	1,500	1,500
Borrowing Base	29,995	30,835	31,610	32,134	32,465	32,797	33,128	33,459	33,530	33,601	33,672	33,743	33,814	34,193	34,193	34,193
Overadvance (Availability)	2,763	1,923	1,148	624	293	(38)	(370)	(701)	(772)	(843)	(914)	(985)	(1,056)	794	794	794
Max Overadvance	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Net Availability	2,237	3,077	3,852	4,376	4,707	5,038	5,370	5,701	5,772	5,843	5,914	5,985	6,056	4,206	4,206	4,206
Total Liquidity	22,409	17,898	14,285	11,100	9,455	21,034	19,389	17,677	16,833	20,319	19,130	17,871	16,534	16,045	5,706	5,706

EXHIBIT B

INTERIM DIP ORDER (ABL DIP FACILITY)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
BOOMERANG TUBE, LLC, et al.,¹) Case No. 11247 (____)
)
 Debtors.) (Jointly Administered)
 Related Docket Nos. [__]

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A)
OBTAIN POSTPETITION REVOLVING LOAN FINANCING PURSUANT TO
11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), AND 364(e) AND (B) USE
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION
TO THE PREPETITION REVOLVING LOAN LENDERS, (III) SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULES
4001(b) AND 4001(c), AND (IV) GRANTING RELATED RELIEF**

This matter came before this Court on the motion (the "Motion") of Boomerang Tube, LLC and its affiliated debtors (collectively, the "Debtors") requesting that this Court enter an order authorizing the Debtors to: (a) incur Postpetition Revolving Loan Debt on an emergency basis pending a Final Hearing; (b) use certain Cash Collateral on an emergency basis pending a Final Hearing; and (c) grant adequate protection and provide security and other relief to the Prepetition Revolving Loan Lenders. Unless otherwise indicated, all capitalized terms used as defined terms herein have the meanings ascribed thereto in Exhibit A attached hereto and by this reference are made a part hereof.

Having examined the Motion, being fully advised of the relevant facts and circumstances surrounding the Motion, and having completed a hearing on June __, 2015, pursuant to Code §§ 363 and 364 and Fed. R. Bankr. P. 4001(b) and (c) (the "Interim Hearing"), and objections, if any, having been withdrawn, resolved or overruled by the Court, and good and sufficient cause appearing therefor;

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW²:

A. On the Filing Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Code. The Debtors have retained possession of their property and continue to operate their businesses as debtors in possession pursuant to Code §§ 1107 and 1108.

B. The Court has jurisdiction over the Cases and this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Determination of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2), and the Debtors confirmed their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue over this Motion is proper under 28 U.S.C. §§ 1408 and 1409(a).

C. No Committee has been appointed in these Cases.

D. Subject to the rights of parties in interest as set forth in Paragraph 7 of this Order, the Debtors have admitted, stipulated and agreed that:

(i) The Prepetition Revolving Loan Documents evidence and govern the Prepetition Revolving Loan Debt, the Prepetition Revolving Loan Liens and the prepetition financing relationship among the Debtors, the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders.

(ii) The Prepetition Revolving Loan Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with the terms of the Prepetition Revolving Loan Documents.

(iii) As of the Filing Date, the Debtors are liable for payment of the Prepetition Revolving Loan Debt, and the Debtors stipulate that the Prepetition

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Interim Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Interim Order to the extent non inconsistent herewith.

Revolving Loan Debt shall be an allowed claim in an amount not less than \$[REDACTED], exclusive of accrued and accruing Allowable 506(b) Amounts.

(iv) No offsets, defenses or counterclaims to the Prepetition Revolving Loan Debt exist, and no portion of the Prepetition Revolving Loan Debt is subject to contest, objection, recoupment, defense, counterclaim, offset, avoidance, recharacterization, subordination or other claim, cause of action or challenge of any nature under the Code, under applicable non-bankruptcy law or otherwise.

(v) The Prepetition Revolving Loan Liens secure payment of the Prepetition Revolving Loan Debt in accordance with the terms of the Prepetition Revolving Loan Documents and are subject only to Permitted Priority Liens.

(vi) Upon the entry of this Order, the Prepetition Revolving Loan Agent's and the Prepetition Revolving Loan Lenders' interests in the Prepetition Revolving Loan Collateral will be adequately protected, and for purposes of Code §§ 506(b) and (c) and 507(b) and Fed. R. Bankr. P. 3012, as of the Filing Date, the value of the Lenders' interest in the Prepetition Revolving Loan Collateral (exclusive of the Prepetition Priority ABL Collateral) on a going-concern basis was not less than \$45,000,000; provided, however, that nothing herein shall prejudice the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders' rights to later: (1) assert that its interest in the Prepetition Revolving Loan Collateral lacks adequate protection; and (2) seek a different valuation of all or any portion of the Prepetition Revolving Loan Collateral and their interests therein.

(vii) At and after the conclusion of the Investigation Period with respect to all parties in interest, the Debtors shall be deemed not to hold (and shall be deemed to release) any claims, counterclaims, causes of action, defenses or setoff rights relating to the Prepetition Revolving Loan Documents, the Prepetition Revolving Loan Liens, the Prepetition Revolving Loan Debt or otherwise, against the Prepetition Revolving Loan Lenders and the Prepetition Revolving Loan Agent, and their respective affiliates, subsidiaries, agents, officers, directors, employees, advisors, consultants, predecessors in interest, successors and assigns.

E. For purposes of the Subordination and Intercreditor Agreement, dated as of December 20, 2010, among Encana Oil & Gas USA, Boomerang Tube, LLC and the Prepetition Revolving Loan Agent and the Subordination and Intercreditor Agreement, dated as of February 18, 2011, among SB Boomerang Tubular, LLC, Boomerang Tube, LLC and Prepetition Revolving Loan Agent (together, the "Encana/SB Agreements"), (a) the Postpetition Revolving Loan Debt represents a Permitted Refinancing of the Senior Debt under the WFF Loan Documents, and the Postpetition Revolving Loan Documents constitute Permitted Refinancing Senior Debt Documents and (b) on and after the Closing Date, Senior Debt shall mean both the Postpetition Revolving Loan Debt and the Prepetition Revolving Loan Debt, and the Senior Debt Documents shall mean both the WFF Loan Documents and the Postpetition Revolving Loan Documents. The terms "Permitted Refinancing," "Permitted Refinancing Senior Debt Documents," "Senior Debt," "Senior Debt Documents" and "WFF Loan Documents" shall have the meanings ascribed thereto in the Encana/SB Agreements, as applicable.

F. The Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders have consented to the terms of this Order and are entitled to the adequate protection as set forth herein pursuant to Code §§ 361, 362, 363 and 364 for any decrease in the value of their respective interests in the Prepetition Revolving Loan Collateral from and after the Filing Date.

G. By reason of taking any actions pursuant to this Order, the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, and the Postpetition Revolving Loan Lenders shall not be deemed in control of the operations, management or liquidation of any of the Debtors or their assets.

H. The Debtors reasonably believe and represent that the Budget contains all expenses that are reasonable and necessary for the preservation of the Prepetition Revolving Loan Collateral for the period set forth in the Budget and, therefore, includes all amounts potentially chargeable to the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders or the Prepetition Revolving Loan Collateral under Code § 506(c) with respect to such period.

I. The Debtors need to use Cash Collateral and incur Postpetition Revolving Loan Debt as provided herein, and as required by the financing contemplated by the Postpetition Term Loan Credit Agreement, through the conclusion of the Final Hearing, in order to prevent

immediate and irreparable harm to the estate and minimize disruption to and avoid the termination of their business operations. Entry of this Order will also enhance the possibility of a reorganization and, in all events, maximize the value of the Debtors' assets.

J. The Debtors are unable to obtain sufficient financing to operate their businesses in the form of unsecured credit allowable under Code § 503(b)(1) or as an administrative expense under Code §§ 364(a) or (b). Except as provided herein, the Debtors are unable to obtain credit allowable under Code §§ 364(c)(1), (c)(2) or (c)(3) on terms more favorable than those offered by the Postpetition Revolving Loan Lenders.

K. The terms of the Postpetition Revolving Loan Debt have been negotiated at arm's length by the Debtors, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders, and the Postpetition Revolving Loan Debt is being extended in good faith, as that term is used in Code § 364(e).

L. The terms and conditions of the Postpetition Revolving Loan Documents are fair and reasonable, the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration.

M. Under the circumstances of these Cases, this Order is a fair and reasonable response to the Debtors' request for the Prepetition Revolving Loan Lenders' consent to the use of Cash Collateral and for extension of Postpetition Revolving Loan Debt by the Postpetition Revolving Loan Lenders, and the entry of this Order is in the best interest of the Debtors' estates and their creditors.

N. Under the circumstances, the notice provided by Debtors of the Motion, the Interim Hearing, and the relief sought pursuant to this Order is deemed sufficient to satisfy the applicable requirements of Fed. R. Bankr. P. 2002, 4001(b) and (c) and 9014 and Code §§ 102(1), 363, 364(c) and (d).

WHEREFORE, IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED AS SET FORTH HEREIN, AND THAT:

1. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral solely to pay Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt as set forth in Paragraph 2(c) of this Order and otherwise in accordance with and pursuant to the terms and provisions of this Order.

2. Procedure for Use of Cash Collateral.

(a) Delivery of Cash Collateral. The Debtors shall deposit all Cash Collateral, now or hereafter in their possession or control, whether or not arising in ordinary course of business, into the Blocked Account (or otherwise deliver such Cash Collateral to the Postpetition Revolving Loan Agent in a manner satisfactory to the Postpetition Revolving Loan Agent) promptly upon receipt thereof, and such Cash Collateral shall be applied by the Postpetition Revolving Loan Agent in accordance with Paragraph 2(c) of this Order.

(b) Cash Collateral in The Postpetition Revolving Loan Agent's Possession. The Postpetition Revolving Loan Agent is authorized to collect upon, convert to cash and enforce checks, drafts, instruments and other forms of payment now or hereafter coming into its possession or control which constitute Cash Collateral or proceeds thereof.

(c) Application of Cash Collateral. The Postpetition Revolving Loan Agent is authorized to apply all Cash Collateral now or hereafter in the Postpetition Revolving Loan Agent's possession or control as follows: (1) first, to payment of Prepetition Revolving Loan Debt (other than the Sponsor Guaranteed Amount and the Prepetition Priority ABL Debt), including, accrued and accruing Allowable 506(b) Amounts when due in accordance with the terms of the Prepetition Revolving Loan Documents; (2) second, to payment of Postpetition Revolving Loan Debt consisting of Postpetition Revolving Loan Charges; (3) third, to payment of other Postpetition Revolving Loan Debt in accordance with the Postpetition Revolving Loan Documents; (4) fourth, to payment of Prepetition Priority ABL Debt; (5) fifth, to payment of the Sponsor Guaranteed Amount; and (6) sixth, after Payment in Full of all Prepetition Revolving Loan Debt and the Postpetition Revolving Loan Debt on a final and indefeasible basis, to the Postpetition Term Loan Agent for application to the Postpetition Term Loan Debt; or in such other order as Postpetition Revolving Loan Agent may agree with the Debtors from time to time; provided, however, (i) any Cash Collateral collected or otherwise converted from property of the

Debtors in the categories described in the definition of "Term Loan Collateral" under the Prepetition Intercreditor Agreement and securing the Prepetition Priority ABL Debt may only be applied to the payment of the amounts set forth in subclause (4), and the amounts set forth in subclause (4) must be satisfied, first, from Cash Collateral securing the Prepetition Priority ABL Collateral and, second, from all other Cash Collateral. All such applications of Cash Collateral to pay such Prepetition Revolving Loan Debt shall be subject only to the right of parties in interest under Paragraph 7 of this Order. Any amounts disgorged in connection with any determination under Paragraph 7 of this Order shall be first applied to reduce the Postpetition Revolving Loan Debt dollar-for-dollar.

(d) Prohibition Against Use of Cash Collateral. Except as provided for in Paragraph 5(a) of this Order, the Debtors will not use or seek to use Cash Collateral prior to the Termination Date, unless, in addition to the satisfaction of all requirements of Code § 363: (1) the Postpetition Revolving Loan Agent has consented to such order; or (2) the Payment in Full of the Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt has occurred.

(e) Cash Collateral in Third Party's Possession. Debtors shall cause all depository banks (the "Other Banks") at which the Debtors maintain a deposit account (which, for clarity, shall exclude the "TL Deposit Account" (as defined in the Prepetition Intercreditor Agreement and the Postpetition Term Loan Credit Agreement) to remit the available balance in such accounts to the Blocked Account on a daily basis, subject only to any valid and enforceable rights of setoff or other secured claims in favor of the Other Banks as of the Filing Date.

3. Authorization To Incur Postpetition Revolving Loan Debt.

(a) Postpetition Revolving Loan Documents. The Debtors are hereby authorized and have agreed to: (1) execute the Postpetition Revolving Loan Documents and such related documents that the Postpetition Revolving Loan Agent finds reasonably necessary to implement the transactions contemplated by the Postpetition Revolving Loan Documents; and (2) perform their obligations under and comply with all of the terms and provisions of the Postpetition Revolving Loan Documents and this Order (including, without limitation, payment of all Postpetition Revolving Loan Charges when due in accordance with the Postpetition

Revolving Loan Documents). Upon execution and delivery thereof, the Postpetition Revolving Loan Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms.

(b) Permitted Uses of Postpetition Revolving Loan Debt. The Debtors are authorized and have agreed to incur Postpetition Revolving Loan Debt solely: (1) in accordance with the terms and provisions of this Order and the Postpetition Revolving Loan Documents, (2) to the extent required to pay those expenses enumerated in the Budget as and when such expenses become due and payable, subject to the Permitted Variance, (3) to pay the Postpetition Revolving Loan Charges, (4) to provide for adequate protection in favor of the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders, (5) subject to the rights of parties in interest set forth in Paragraph 7 of this Order, to pay any Allowable 506(b) Amounts when due in accordance with the terms of the Prepetition Revolving Loan Documents, and (6) upon entry of the Final Order, to repay all amounts of Prepetition Revolving Loan Debt other than the Sponsor Guaranteed Amount, subject to the rights of parties in interest set forth in Paragraph 7 of this Order. If the Postpetition Revolving Loan Agent advances monies to the Debtors and the Debtors use such monies other than in accordance with the terms or provisions of this Order, such advances shall be considered Postpetition Revolving Loan Debt for purposes of this Order. Notwithstanding anything to the contrary contained herein, no proceeds of Postpetition Revolving Loan Debt or Postpetition Revolving Loan Collateral (other than the Prepetition Term Loan Collateral, after the payment of the Prepetition Priority ABL Debt) may be used to provide any payments in favor of the Prepetition Term Loan Agent, the Prepetition Term Loan Lenders, the Postpetition Term Loan Agent or the Postpetition Term Loan Lenders, or for application to the Prepetition Term Loan Debt or Postpetition Term Loan Debt, in each case, including any interest, fees, charges or expenses arising on account thereof, so long as the Postpetition Revolving Loan Debt and the Prepetition Revolving Loan Debt remain outstanding; provided, however, that the proceeds of Postpetition Revolving Loan Collateral described in paragraph 4(d)(ii)(B) may be applied to the Postpetition Term Loan Debt on a *pari passu* basis with the Incremental DIP Amount, and after the payment in full of the Incremental DIP Amount, such proceeds shall be applied to the Postpetition Term Loan Debt until such obligations are paid in full.

(c) Principal Terms of Postpetition Revolving Loan Debt. In addition to the other terms and provisions of the Postpetition Revolving Loan Documents, the following principal terms and conditions of the Postpetition Revolving Loan Debt are hereby approved and shall be apply thereto:

(i) Maximum Amount. The maximum principal amount of Postpetition Revolving Loan Debt outstanding shall not at any time exceed the lesser of the Postpetition Revolving Loan Commitment or the Postpetition Borrowing Base, less, to the extent specified in the Postpetition Revolving Loan Credit Agreement, the Prepetition Revolving Loan Debt.

(ii) Postpetition Borrowing Base. The Postpetition Borrowing Base shall include an amount of availability that is predicated upon the Permitted Overadvance, which as of the Closing Date shall be \$5,000,000.

(iii) Interest. The Postpetition Revolving Loan Debt shall bear interest at a per annum rate equal to the LIBOR Rate plus 4.50% per annum. Per annum rates shall be calculated on the basis of a year of 360 days and the actual number of days elapsed.

(iv) Closing Fee. The Debtors shall pay to the Postpetition Revolving Loan Agent a closing fee (the "Closing Fee") in an amount equal to \$300,000, \$150,000 of which shall be fully earned, due and payable immediately on the date hereof, and \$150,000 of which shall be fully earned, due and payable upon the first funding of any Incremental DIP Amount at the request of Borrower (with the prior written consent of Postpetition Term Loan Agent).

(v) Prepayment Premium. If the Postpetition Revolving Loan Debt is Paid in Full prior to the Termination Date, or if the commitments to extend credit to the Debtors under the Postpetition Revolving Loan Credit Agreement are terminated prior to the Maturity Date, Debtors shall pay to the Postpetition Revolving Loan Agent a prepayment premium of \$1,250,000; provided that such premium will be waived if the Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt is Paid in Full with the proceeds of any sale of all or substantially all of the Debtors' assets pursuant to Code § 363 (but not from any other source).

(vi) Maturity. The Postpetition Revolving Loan Debt shall mature and be due and payable in full by the Debtors on the Termination Date.

(vii) Joint and Several Liability of Debtors. The obligations of each Debtor under this Order and the Postpetition Revolving Loan Documents shall be joint and several.

(viii) Control Agreements. All deposit account control agreements or similar collateral control agreements among the Prepetition Loan Documents in effect as of the Filing Date shall remain in full force and effect with

respect to the Postpetition Revolving Loan Debt and inure to the benefit of the Postpetition Revolving Loan Agent.

(ix) Collateral Access Agreements. All rights and remedies granted in any landlord waiver or consent executed and delivered in connection with the Prepetition Revolving Loan Debt and the Prepetition Revolving Loan Credit Agreement, and all rights granted to the Prepetition Revolving Loan Agent or the Prepetition Revolving Loan Lenders therein, including, without limitation, the right to access any premises leased by the Debtors and access the Prepetition Revolving Loan Collateral, shall also be deemed to be continuing, enforceable and applicable to and binding upon the landlords and other parties to such agreements with respect to the Postpetition Revolving Loan Agent, Postpetition Revolving Loan Collateral and Postpetition Revolving Loan Debt.

(x) Indemnification. The Debtors shall be deemed to indemnify and hold harmless the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders on the same basis as provided in the Prepetition Revolving Loan Documents but with respect to matters related to the Postpetition Revolving Loan Debt and Postpetition Revolving Loan Collateral, and the administration and interests of Postpetition Revolving Loan Agent and Postpetition Revolving Loan Lenders therein.

(xi) Bank Products. The Debtors will maintain their primary depository and treasury management relationships with Wells Fargo Bank, N.A. or one of its affiliates, and any other accounts (other than the TL Deposit Account (as defined in the Prepetition Intercreditor Agreement)) with other depository institutions shall be subject to control agreements in form and substance satisfactory to Postpetition Revolving Loan Agent. All Prepetition Revolving Loan Debt consisting of Bank Product Obligations or for Letters of Credit (each as defined in the Prepetition Revolving Loan Agreement) are be deemed reissued or otherwise incurred as Postpetition Revolving Loan Debt under the Postpetition Revolving Loan Documents.

(d) Superpriority Administrative Expense Status; The Postpetition Revolving Loan Liens.

(i) The Postpetition Revolving Loan Debt is hereby granted superpriority administrative expense status under Code § 364(c)(1), with priority over all costs and expenses of administration of the Cases that are incurred under any provision of the Code (the "Superpriority Claim"), except to the extent set forth in Section 4(d) of this Order and subject to the Carveout, and, the Postpetition Revolving Loan Debt is entitled to the protections of Code § 364(e).

(ii) The Postpetition Revolving Loan Agent is hereby granted the Postpetition Revolving Loan Liens to secure the Postpetition Revolving Loan Debt. The Postpetition Revolving Loan Liens: (1) are in addition to the Prepetition Revolving Loan Liens and the Replacement Liens; (2) pursuant to Code § 364(c)(2), are granted with respect to all Postpetition Revolving Loan Collateral that is not otherwise encumbered by a validly perfected security interests or lien on the Filing Date, (3)

pursuant to Code § 364(c)(3), are only (A) junior to the Permitted Priority Liens, the Prepetition Priority ABL Liens and the Term Loan Liens with respect to all categories of the Debtors' property described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement, and (B) junior to the Prepetition Revolving Loan Liens, the Replacement Liens and any Permitted Priority Liens in all respects, in each case without any further action by the Debtors or the Postpetition Revolving Loan Agent and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments; (4) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Cases; and (5) are subject to Paragraph 4(d) below.

(iii) The Debtors shall execute and deliver to the Postpetition Revolving Loan Agent such financing statements, mortgages, instruments and other documents as the Postpetition Revolving Loan Agent may reasonably request from time to time, and any such documents filed by the Postpetition Revolving Loan Agent shall be deemed filed as of the date of this Order. Further, the Prepetition Revolving Loan Agent shall serve as agent for the Postpetition Revolving Loan Agent for purposes of perfecting the Postpetition Revolving Loan Agent's security interest in any Postpetition Revolving Loan Collateral that requires perfection by possession or control, and all Prepetition Third Party Collateral Documents shall also be deemed to be for the benefit of the Postpetition Revolving Loan Agent without further action by any party.

(e) Prohibition Against Additional Debt. From and after the date hereof, prior to the Termination Date, other than the Prepetition First Lien Term Loan Debt, Prepetition Second Lien Term Loan Debt, Postpetition Term Loan Debt and debt (for clarity, excluding the Carveout) secured by Permitted Priority Liens (to the extent such secured debt does not exceed the amount outstanding as of the Filing Date), the Debtors will not incur or seek to incur debt secured by a lien which is equal to or superior to the Prepetition Revolving Loan Liens or the Postpetition Revolving Loan Liens, or which is given superpriority administrative expense status under Code § 364(c)(1), unless, in addition to the satisfaction of all requirements of Code § 364: (1) the Postpetition Revolving Loan Agent and Prepetition Revolving Loan Agent have consented to such order; (2) at the time such an order is entered, there is no Postpetition Revolving Loan Debt outstanding and no further obligation of the Postpetition Revolving Loan Lenders to extend Postpetition Revolving Loan Debt; or (3) such credit or debt is first used for the Payment in Full of the Prepetition Revolving Loan Debt and the Postpetition Revolving Loan Debt.

(f) The Debtors hereby are authorized to do and perform all acts and to make, execute, and deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the Postpetition Revolving Loan Documents and the

creation and perfection of the Postpetition Revolving Loan Liens granted by the Debtors, as described in and provided for by the Postpetition Revolving Loan Documents.

4. Adequate Protection of Interests in the Prepetition Revolving Loan Collateral. As adequate protection for the Prepetition Revolving Loan Agent's interest in the Prepetition Revolving Loan Collateral to the extent required under Code §§ 361, 362, 363 or 364 from and after the Filing Date (including, without limitation, for any decrease in the value of such interest):

(a) Priority of Prepetition Revolving Loan Liens/Allowance of the Prepetition Revolving Loan Lenders' Claim. Subject to the reservation of rights pursuant to the terms of Paragraph 7 of this Order: (1) the Prepetition Revolving Loan Liens shall constitute Priority Liens, subject only to the Permitted Priority Liens; and (2) the Prepetition Revolving Loan Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Revolving Loan Documents.

(b) Replacement Liens. The Prepetition Revolving Loan Agent (for the benefit of the Prepetition Revolving Loan Lenders) is hereby granted the Replacement Liens. The Replacement Liens: (1) are and shall be in addition to the Prepetition Revolving Loan Liens and the Postpetition Revolving Loan Liens; (2) are and shall be properly perfected, valid and enforceable liens without any further action by the Debtors or the Prepetition Revolving Loan Agent and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments; and (3) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Cases. Notwithstanding the foregoing, the Debtors are authorized to and shall execute and deliver to the Prepetition Revolving Loan Agent such financing statements, mortgages, instruments and other documents as the Prepetition Revolving Loan Agent may reasonably request from time to time in respect of the Replacement Liens.

(c) Allowed Code § 507(b) Claim. If and to the extent the adequate protection of the interests of the Prepetition Revolving Loan Agent granted pursuant to this Order proves insufficient, the Prepetition Revolving Loan Agent shall have an allowed claim under Code § 507(b) (the "Adequate Protection Claim"), subject to the Carveout, in the amount

of any such insufficiency, with priority over: (1) all costs and expenses of administration of the Cases (other than the Postpetition Revolving Loan Lenders' and Postpetition Term Loan Lenders' claims under Code § 364(c)(1)) that are incurred under any provision of the Code; and (2) the claims of any other party in interest under Code § 507(b) except as provided in Paragraph 4(d) below.

(d) Intercreditor Matters.

(i) Prepetition Intercreditor Agreement. The Prepetition Intercreditor Agreement shall remain in full force in effect subject only to the terms of this Order and the Final Order. This Order, the Postpetition Revolving Loan Documents and any Final Order, shall constitute Working Capital Credit Documents as defined in the Prepetition Intercreditor Agreement.

(ii) Certain Postpetition Priorities.

(A) The Superpriority Claim for the Incremental DIP Amount will at all times rank *pari passu* with the superpriority administrative expense claim under Code § 364(c)(1) of the Postpetition Term Loan Lenders for the Postpetition Term Loan Debt. The remaining Superpriority Claim shall be junior to such claim of the Postpetition Term Loan Lenders under Code § 364(c)(1).

(B) The Postpetition Revolving Loan Liens under Code § 364(c)(2) securing the Incremental DIP Amount shall at all times rank *pari passu* with the liens of Postpetition Term Loan Agent under Code § 364(c)(2) securing the Postpetition Term Loan Debt, and the remaining Postpetition Revolving Loan Liens under Code § 364(c)(2) shall be junior to the Postpetition Term Loan Liens under Code § 364(c)(2).

(C) In the event of any use or sale of, or stay relief granted with respect to, the Postpetition Revolving Loan Collateral (other than property of the categories described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement) to which the Postpetition Revolving Loan Agent consents, the Postpetition Term Loan Agent and the Prepetition Term Loan Agent (in their respective capacities as holders of an interest in such Postpetition Revolving Loan Collateral) shall not object or be entitled to seek adequate protection in connection therewith.

(D) In the event of any use or sale of, or stay relief granted with respect to, Postpetition Revolving Loan

Collateral of the categories described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement to which the Postpetition Term Loan Agent consents, the Postpetition Revolving Loan Agent and the Prepetition Revolving Loan Agent (in their respective capacities as holders of an interest in such Postpetition Revolving Loan Collateral) shall not object or be entitled to seek adequate protection in connection therewith (except to the extent securing the Prepetition Priority ABL Debt).

(E) The Prepetition Revolving Loan Agent and Postpetition Revolving Loan Agent each acknowledge and agree that, without the prior written consent of the Postpetition Term Loan Agent, neither of them shall seek to enforce the Replacement Liens, Postpetition Revolving Loan Liens, or any other interests or claims against the Debtors' property of the categories described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement except to the extent securing the Prepetition Priority ABL Debt (and, in such case, in accordance with the terms of the Prepetition Intercreditor Agreement).

(F) The Prepetition Term Loan Agent and Postpetition Term Loan Agent each acknowledge and agree that, without the prior written consent of the Postpetition Revolving Loan Agent, neither of them shall seek to enforce any of the Term Loan Liens, or any other interests or claims, against the Debtors' property of the categories described in the definition of "Working Capital Collateral" in the Prepetition Intercreditor Agreement.

(e) No Surcharge. Effective upon entry of the Final Order, the Debtors (or any Trustee) agree that there shall be no surcharge of the Postpetition Revolving Loan Collateral for any purpose, unless agreed to by the Prepetition Revolving Loan Agent and the Postpetition Revolving Loan Agent, and the Debtors (or any Trustee) shall be deemed to have waived any rights, benefits or causes of action under Code § 506(c), the enhancement of collateral provisions of Code § 552(b), or any other legal or equitable doctrine (including, without limitation, unjust enrichment) as they may relate to or be asserted against the Prepetition Revolving Loan Agent, Prepetition Revolving Lenders, Postpetition Revolving Loan Agent, Postpetition Revolving Loan Lenders, the Prepetition Revolving Loan Collateral, or the Postpetition Revolving Loan Collateral.

5. Termination Date; Rights and Remedies.

(a) Effect of Termination Date. Unless extended by the written agreement of the Postpetition Revolving Loan Agent, upon the Termination Date, without further order of Court but subject to one (1) business day's written notice to the Debtors (with a copy to the United States Trustee and counsel to any Committee): (1) the Debtors' authorization to use Cash Collateral and incur Postpetition Revolving Loan Debt hereunder will automatically terminate; and (2) at the Postpetition Revolving Loan Agent's election: (i) the Postpetition Revolving Loan Debt shall be immediately due and payable, (ii) the Debtors shall be prohibited from using Cash Collateral for any purpose other than in accordance with Paragraph 2(c) of this Order unless and until the Debtors obtain an order permitting further Cash Collateral use, and (iii) the Postpetition Revolving Loan Agent shall be entitled to setoff any Cash Collateral in the Postpetition Revolving Loan Agent's possession or control and apply such Cash Collateral in accordance with Paragraph 2(c) of this Order.

(b) Rights and Remedies. On the Termination Date, the Prepetition Revolving Loan Agent and the Postpetition Revolving Loan Agent may apply to this Court for all appropriate relief, upon such notice as may be appropriate under the circumstances; provided, however, that: (1) the obligations of the Debtors and the rights of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, and the Postpetition Revolving Loan Lenders with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired, unaffected and governed by the terms of this Order; and (2) subject to the terms of this Order, the Debtors and the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, and the Postpetition Revolving Loan Lenders shall retain all of their respective rights and remedies under the Code, including, without limitation, the Debtors' right to request the continued use of Cash Collateral or to request to incur postpetition indebtedness and the respective rights of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders to oppose the Debtors' further use of Cash Collateral or incurrence of postpetition indebtedness and to move for relief from the automatic stay.

(c) Access to Collateral. Upon entry of the Final Order, with written notice to the landlord of any of Debtors' leased premises that an Event of Default has occurred and is continuing, Prepetition Revolving Loan Agent and Postpetition Revolving Loan Agent may enter upon such leased premises for the purpose of exercising any right or remedy with respect to the Prepetition Revolving Loan Collateral or Postpetition Revolving Loan Collateral located thereon and shall be entitled to the Debtors' rights and privileges under such lease(s) without interference from such landlord; provided that Prepetition Revolving Loan Agent or Postpetition Revolving Loan Agent, as applicable, shall pay to such landlord (on the Debtors' behalf) rent first accruing after the above referenced written notice and during the period of occupancy by Prepetition Revolving Loan Agent or Postpetition Revolving Loan Agent, as applicable, calculated on a per diem basis.

6. Carveout.

(a) Carveout Terms. The Postpetition Revolving Loan Liens, the Superpriority Claim, the Replacement Liens and the Adequate Assurance Claim shall be subject to the right of payment of the Carveout; provided that (x) the amount of Carveout shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carveout is invoked, or by any fees, expenses, indemnities or other amounts paid to the Prepetition Revolving Loan Agent or Prepetition Loan Lenders, and (y) nothing herein shall be construed to impair the ability of any party to object to any such fees, expenses, reimbursement or compensation.

(b) Carveout Usage. No portion of the Carveout and no Postpetition Revolving Loan Debt or Postpetition Revolving Loan Collateral may be used to pay any fees or expenses incurred by any entity, including the Debtors, any Committee or the Carveout Professionals, in connection with claims or causes of action adverse to the respective interests of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, the Postpetition Revolving Loan Lenders, the Postpetition Term Loan Agent, Postpetition Term Loan Lenders, Prepetition First Lien Term Loan Agent, Prepetition First Lien Term Loan Lenders, Prepetition Second Lien Term Loan Agent, or the Prepetition Second Lien Term Loan Lenders, including, without limitation, (1) preventing, hindering or

delaying such party's enforcement or realization upon any of the Postpetition Revolving Loan Collateral once an Event of Default has occurred; (2) using or seeking to use Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Postpetition Revolving Loan Collateral without such party's consent; (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the Prepetition Revolving Loan Debt, Postpetition Revolving Loan Debt, any mortgages, liens or security interests securing the same, or any other rights or interests of any such party, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Code, against any such party or (4) attempting to modify or otherwise alter any of the terms and conditions set forth in this Order; provided, however, that the foregoing shall not apply to costs and expenses, in an amount not to exceed \$25,000, incurred by the Committee's professionals in connection with the investigation of any potential Challenges in accordance with Paragraph 7 of this Order.

(c) Payment of any amounts on account of the Carveout, whether by or on behalf of the Prepetition Revolving Loan Agent, Prepetition Revolving Loan Lenders, Postpetition Revolving Loan Agent or any Postpetition Lender, shall not and shall not be deemed to reduce the Postpetition Revolving Loan Debt or the Prepetition Revolving Loan Debt, and shall not and shall not be deemed to subordinate any of the Postpetition Revolving Loan Agent's or the Prepetition Revolving Loan Agent's liens and security interests in the Postpetition Revolving Loan Collateral or any Superpriority Claim or Adequate Protection Claim to any junior pre- or post-petition lien, interest or claim in favor of any other party.

7. Reservation of Rights; Bar of Challenges and Claims. The stipulations and representations of the Debtors contained Paragraphs D(i)-(vii) of this Order shall be binding on all parties in interest in the Cases, unless and solely to the extent that (i) the Debtors receive notice of a potential Challenge during the Investigation Period from a Challenge Party and (ii) the Court rules in favor of the plaintiff in any timely and properly filed Challenge resulting therefrom.

(a) Challenge Procedure. During the Investigation Period, a Challenge Party shall be entitled to determine whether a good faith basis to assert a Challenge exists. If a Challenge Party identifies a good faith basis to assert a Challenge, it shall notify the

Debtors during the Investigation Period of its demand that the Debtors initiate an action or adversary proceeding relating thereto (a "Challenge Notice"). The Debtors shall notify the applicable Challenge Party of whether the Debtors intend to initiate such action or adversary proceeding, or enter into a settlement of the matters subject to such Challenge, within five (5) business days of receipt of a Challenge Notice. If the Debtors elect to initiate such action or adversary proceeding, or file a motion to settle such Challenge, they must do so within ten (10) business days of such notice to a Challenge Party. If the Debtors do not timely notify such Challenge Party that the Debtors intend to initiate the action or adversary proceeding or a settlement of the matters related to the Challenge Notice, do not timely initiate such action or adversary after timely notice, or notify the Challenge Party that the Debtors do not intend to initiate such action or adversary proceeding, then in each such case the Challenge Party shall have ten (10) business days from the applicable date to initiate such action or adversary proceeding. Nothing herein shall be deemed to grant standing in favor of any Challenge Party absent further order of this Court. The Debtors shall at all times retain authority to prosecute, settle or compromise any Challenge in the exercise of their business judgment and subject to any applicable further order of court.

(b) Bar of Challenges and Claims. If the Debtors do not receive notice of a potential Challenge during the Investigation Period, or a Challenge is not timely commenced in accordance with Paragraph 7(a) above, against the Prepetition Revolving Loan Lenders or the Prepetition Revolving Loan Agent, without further order of the Court (1) the Prepetition Revolving Loan Debt and the Prepetition Revolving Loan Liens shall be deemed to be allowed for all purposes in these Cases as set forth in this Order and shall not be subject to challenge by any party in interest as to extent, validity, priority or otherwise, and (2) the Debtors and their estates shall be deemed to have waived, released and discharged the Prepetition Revolving Loan Lenders and the Prepetition Revolving Loan Agent, and their respective officers, directors, principals, attorneys, consultants, predecessors in interest, and successors and assigns of and from any and all claims and causes of action, indebtedness, and obligations, of every type, which occurred on or prior to the date of this Order with respect to or in connection with the Prepetition Revolving Loan Debt, the Prepetition Revolving Loan Liens, the Prepetition Revolving Loan Documents or otherwise.

8. Right to Credit Bid. In connection with the sale or other disposition of all or any portion of the Prepetition Revolving Loan Collateral or the Postpetition Revolving Loan Collateral, Prepetition Revolving Loan Agent and Postpetition Revolving Loan Agent, as applicable, shall have the right to use the Prepetition Revolving Loan Debt or Postpetition Revolving Loan Debt, as applicable, or any part thereof to credit bid under Code § 363(k) with respect to any bulk or piecemeal sale of all or any portion of the Prepetition Revolving Loan Collateral or Postpetition Revolving Loan Collateral.

9. Waiver of Right to Return/Consent to Setoff. The Debtors hereby waive their rights, without the prior written consent of the Postpetition Revolving Loan Agent: (a) to return any of the Postpetition Revolving Loan Collateral pursuant to Code § 546(h); and (b) to consent to any setoff pursuant to Code § 553.

10. No Marshaling. Prepetition Revolving Loan Agent, Prepetition Revolving Loan Lenders, Postpetition, Revolving Loan Agent, Postpetition Revolving Loan Lenders, the Prepetition Revolving Loan Collateral and Postpetition Revolving Loan Collateral will in no event be subject to the doctrine of marshaling.

11. Force and Effect of Prepetition and Postpetition Revolving Loan Documents. Except as modified herein and subject to the other provisions of this Order and the Code, the Prepetition Revolving Loan Documents shall remain in full force and effect with respect to the Prepetition Revolving Loan Debt (including, without limitation, the Debtors' obligation to indemnify and hold harmless the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders on the terms provided therein). To the extent there exists any conflict among the terms of the Motion, the Prepetition Revolving Loan Documents and this Order, this Order shall govern and control. To the extent there exists any conflict among the terms of the Motion, the Postpetition Revolving Loan Documents and this Order, this Order shall govern and control.

12. Modification of Stay. The automatic stay of Code § 362 is hereby modified to the extent necessary to effectuate the relief granted by this Order.

13. No Waiver. The Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders, and the Postpetition Revolving Loan Agent and the Postpetition

Revolving Loan Lenders, shall not be deemed to have suspended or waived any of their rights or remedies under this Order, the Prepetition Revolving Loan Documents, the Postpetition Documents, the Code, or applicable nonbankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of the applicable agent and directed to Debtors. No failure of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, or the Postpetition Revolving Loan Lenders to require strict performance by the Debtors (or by any Trustee) of any provision of this Order shall waive, affect or diminish any right of such parties thereafter to demand strict compliance and performance therewith, and no delay on the part of the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent, or the Postpetition Revolving Loan Lenders in the exercise of any right or remedy under this Order, the Prepetition Revolving Loan Documents, the Postpetition Revolving Loan Documents, the Code, or applicable nonbankruptcy law shall preclude the exercise of any right or remedy. Further, this Order shall not constitute a waiver by the Prepetition Revolving Loan Agent or the Prepetition Revolving Loan Lenders to later assert (a) that their interests in the Prepetition Revolving Loan Collateral lack adequate protection, or (b) a claim under Code § 507(b).

14. Amendments. The Debtors, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders may enter into amendments or modifications of the Postpetition Documents or the Budget without further notice and hearing or order of this Court; provided that (a) such modifications or amendments do not materially and adversely affect the rights of any creditor or other party-in-interest and (b) notice of any such amendment or modification is filed with this Court.

15. Binding Effect. Except as provided in Paragraph 7 of this Order, this Order shall be binding on all parties in interest in the Cases and their respective successors and assigns, including any Trustee, except that any Trustee shall have the right to terminate this Order after notice and a hearing. In accordance with Code § 364(e), if this Order does not become a final nonappealable order, if a Trustee terminates this Order, or if any of the provisions of the Order are hereafter modified, amended, vacated or stayed by subsequent order of this Court or any other court, such termination or subsequent order shall not affect: (a) subject to Paragraph 7 of this Order, the stipulations, representations, and findings contained in this Order

and the relief granted by and the releases contained in this Order; and (b) the priority, validity, enforceability or effectiveness of any lien, security interest or other benefit or claim authorized hereby with respect to Cash Collateral used or Postpetition Revolving Loan Debt incurred prior to the effective date of such termination or subsequent order. All such liens, security interests, claims and other benefits shall be governed in all respects by the original provisions of this Order, and the Prepetition Revolving Loan Agent, the Prepetition Revolving Loan Lenders, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders shall be entitled to all the rights, remedies, privileges and benefits granted hereto, including the liens and priorities granted herein. Except as otherwise explicitly set forth in this Order, no third party is intended to be, or shall be deemed to be, a third party beneficiary of this Order.

16. Survival. The provisions of this Order, and any actions taken pursuant to or in reliance upon the terms hereof, shall survive entry of, and govern in the event of any conflict with, any order which may be entered in the Cases: (a) confirming any chapter 11 plan, (b) converting any Case to a case under chapter 7 of the Code, (c) dismissing any Case, (d) withdrawing of the reference of any Case from this Court, or (e) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Order shall continue in full force and effect until the Payment in Full of the Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt.

17. Effectiveness.

- (a) The requirements set forth in Bankruptcy Rule 6003(b) have been satisfied.
- (b) Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.
- (c) The requirements of Bankruptcy Rule 6004(a) are waived.
- (d) The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

18. Objections Overruled. All objections to the entry of this Order are, to the extent not withdrawn, hereby overruled with prejudice.

19. Notice of Final Hearing. The Final Hearing is scheduled for July ____, 2015, at _____ and may be continued from time to time without further notice other than that given in open court. The Debtors are directed to serve promptly a copy of this Order and the proposed Final Order by first class mail, postage prepaid, on counsel for the Prepetition Revolving Loan Agent, Lenders, the Debtors' other secured creditors, Debtors' twenty (20) largest unsecured creditors, and the United States Trustee, which service shall constitute adequate and proper notice of the Final Hearing. Any objection to the Order must be filed with the Court and received by the respective counsel of record for the Debtors, the Postpetition Revolving Loan Agent, the Prepetition Revolving Loan Agent, the Prepetition Term Loan Agent, and the United States Trustee no later than July ____, 2015, at _____. Any timely and properly filed and served objection will be heard at the Final Hearing.

Hon. _____
United States Bankruptcy Judge

Dated: June __, 2015

EXHIBIT A

DEFINED TERMS

1. **503(b)(9) Claims.** Any valid and allowed claims entitled to priority pursuant to Code § 503(b)(9).

2. **Adequate Protection Claim.** The definition for such term set forth in Paragraph 4(c) of this Order.

3. **Allowable 506(b) Amounts.** Collectively, to the extent allowable under Code § 506(b), (a) interest at the default rate of interest as set forth in the Prepetition Revolving Loan Documents, and (b) all fees, costs, expenses, and other charges due or coming due under the Prepetition Revolving Loan Documents or in connection with the Prepetition Revolving Loan Debt (regardless of whether such fees, costs, interest and other charges are included in the Budget), and all costs and expenses at any time incurred by the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders in connection with: (i) the negotiation, preparation and submission of this Order and any other order or document related hereto, and (ii) the representation of the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders in the Cases.

4. **Avoidance Actions.** Collectively, all proceeds of the Debtors' claims and causes of action under Code §§ 502(d), 506(c), 544, 545, 547, 549, 550, 552(b), and 553, or any declarations sought in respect thereof, and any other actions under the Code, whether pursuant to federal law or applicable state law, and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

5. **Blocked Account.** The "Agent's Account" as defined in the Postpetition Revolving Loan Credit Agreement.

6. **Budget.** The budget attached to this Order as Exhibit B, as amended, modified or supplemented from time to time, as may be agreed to in writing by the Postpetition Revolving Loan Agent and Debtors.

7. **Carveout.** The following fees and expenses to the extent allowed by the Court: (i) one-half (1/2) of all fees incurred after the Filing Date and prior to the Termination Date required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717 accrued on and after the Filing Date and prior to the Termination Date, (ii) one-half (1/2) of all reasonable fees and expenses incurred by a trustee under Code § 726(b) in an aggregate amount not exceeding \$25,000, (iii) for the period commencing on the Filing Date and ending on the date of delivery of a Carveout Trigger Notice, the lesser of (a) one-half (1/2) of the actual accrued and unpaid fees, disbursements, costs and expenses incurred by the Carveout Professionals during such period, or (b) one-half (1/2) of the amounts set forth in the Budget with respect to each Carveout Professional, and (iv) on and after the date of the delivery of a Carveout Trigger Notice, all unpaid fees, disbursements, costs and expenses incurred by the Carveout Professionals in an aggregate amount not to exceed the Post Carveout Trigger Notice Cap.

8. **Carveout Professionals.** Collectively, counsel for the Debtors (Debevoise & Plimpton, LLP and Young Conaway Stargatt & Taylor, LLP), financial advisor for the Debtors (Zolfo Cooper LLC) and any professional or professional firms authorized by the Court to be retained by any Committee.

9. **Carveout Trigger Notice.** A written notice delivered by the Postpetition Revolving Loan Agent or the Postpetition Term Loan Agent to the Debtors, the Carveout Professionals, the United States Trustee and any Committee, which notice may be delivered following the occurrence of an Event of Default or an "Event of Default" under the Postpetition Term Loan Credit Agreement that states that the Debtors' ability to pay such Carveout Professionals will be limited by the Post Carveout Trigger Notice Cap.

10. **Cases.** The chapter 11 cases or any superseding chapter 7 cases of the Debtors.

11. **Cash Collateral.** Collectively, (a) all "cash collateral," as that term is defined in Code § 363(a), in which the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders have an interest, (b) all deposits subject to setoff rights in favor of the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders, (c) all cash arising from the collection or other conversion to cash of the Prepetition Revolving Loan Collateral; provided that to the extent such cash was collected or otherwise converted from property of the Debtors in the categories described in the definition of "Term Loan Collateral" under the Prepetition Intercreditor Agreement, such cash shall constitute Cash Collateral only if such property secures the Prepetition Priority ABL Debt, and (d) upon entry of the Final Order, Avoidance Actions.

12. **Challenge.** A claim or cause of action challenging the extent, validity, perfection, priority or enforceability of the Prepetition Revolving Loan Debt, the Prepetition Revolving Loan Liens or any other claims or causes of action against the Prepetition Revolving Loan Agent or the Prepetition Revolving Loan Lenders, which Debtors, the Committee, or another party-in-interest may bring, in accordance with Paragraph 7 of this Order.

13. **Challenge Party.** The Committee or other party-in-interest (other than any parties to the Support Agreement or their affiliates) with the requisite standing.

14. **Code.** The United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*), as amended, and any successor statute. Unless otherwise indicated, all statutory section references in this Order are to the Code.

15. **Committee.** Any official creditors' committee appointed to represent unsecured creditors in these Cases pursuant to Code § 1102.

16. **Effective Date.** The date one which the Support Agreement is fully executed, delivered and effective in accordance with its terms.

17. **Event of Default.** The definition for such term set forth in the Postpetition Revolving Loan Credit Agreement.

18. **Filing Date.** June 8, 2015.

19. **Final Hearing.** The final hearing on the Motion conducted in accordance with Fed. R. Bankr. P. 4001.

20. **Final Order.** The order authorizing the Debtors to use Cash Collateral and incur Postpetition Revolving Loan Debt from or with the consent of the Prepetition Revolving Loan Lenders and the Postpetition Revolving Loan Lenders, entered at or in connection with the Final Hearing.

21. **Guarantors.** Collectively, BTCSP, LLC, a Delaware limited liability company, and BT Financing, Inc., a Delaware corporation.

22. **Incremental DIP Amount.** As of any date of determination, the amount of the Postpetition Revolving Loan Debt equal to the aggregate amount of outstanding Postpetition Revolving Loan Debt (without giving effect to any draws under Letters of Credit (as defined in the Prepetition Revolving Loan Credit Agreement) that are deemed reissued under the Postpetition Revolving Loan Documents) plus the Prepetition Revolving Loan Debt that is in excess (if at all) of the amount of the Prepetition Revolving Loan Debt as of the Filing Date.

23. **Investigation Period.** (a) With respect to any Challenge Party other than the Committee, the period from the Filing Date until the date that is the earlier of seventy-five (75) days after the entry of this Order and the date of the confirmation hearing of the Debtors' plan of reorganization; (b) with respect to the Committee, the period from the Filing Date until the date that is the earliest of sixty (60) days after the date that a Committee is formed, seventy-five (75) days after the entry of this Order, and the date of the confirmation hearing of the Debtors' plan of reorganization; and (c) if these Cases are converted to cases under chapter 7 of the Code prior to the latest date by which the Investigation Period would end pursuant to the preceding clauses (a) and (b), with respect to the chapter 7 trustee, the period ending on the date that is sixty (60) days after the date that these Cases are converted.

24. **LIBOR Rate.** The "LIBOR Rate" as defined in the Postpetition Revolving Loan Credit Agreement but calculated based upon an "Interest Period" (as also defined in the Prepetition Revolving Loan Credit Agreement) of one (1) month and shall be determined on a daily basis.

25. **Payment in Full.** The occurrence of (a) the payment in full in cash or immediately available funds of all of the applicable obligations, (b) the termination or expiration of all commitments to extend credit to the Debtors by the applicable lender, and (c) with respect to the Prepetition Revolving Loan Debt and Postpetition Revolving Loan Debt: (i) the termination of, or providing cash collateral in respect of all outstanding letters of credit and "Bank Product Obligations" (as such term is defined in the Prepetition Revolving Loan Credit Agreement and Postpetition Revolving Loan Credit Agreement) that comprise a portion of the Prepetition Revolving Loan Debt or Postpetition Revolving Loan Debt, on the basis set forth in the Prepetition Revolving Loan Credit Agreement or Postpetition Revolving Loan Credit Agreement, respectively, and (ii) the cash collateralization of any asserted or threatened claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any Prepetition Revolving Loan Lender, any Postpetition Lender, the Prepetition

Revolving Loan Agent or the Postpetition Revolving Loan Agent may be entitled to indemnification pursuant to the indemnification provisions in the Prepetition Revolving Loan Documents or Postpetition Revolving Loan Documents, as applicable.

26. ***Permitted Overadvance.*** The "Permitted Overadvance" as defined in the Postpetition Revolving Loan Credit Agreement.

27. ***Permitted Priority Liens.*** Collectively, (a) the Carveout, (b) liens in favor of third parties upon the Prepetition Revolving Loan Collateral, which third-party liens, as of the Filing Date: (1) had priority under applicable law over the Prepetition Revolving Loan Debt, (2) were not subordinated to the Prepetition Revolving Loan Debt by agreement or applicable law, and (3) were non-avoidable, valid, properly perfected and enforceable as of the Filing Date and (c) with respect to the Debtors' property of the categories described in the definition of Prepetition Term Loan Collateral, the "Term Permitted Prior Liens" (as such term is defined in the order entered substantially contemporaneously with this Order authorizing the Debtors to incur the Postpetition Term Loan Debt).

28. ***Permitted Variance.*** The "Permitted Variance" as defined in the Postpetition Revolving Loan Credit Agreement.

29. ***Post Carveout Trigger Notice Cap.*** \$75,000.

30. ***Postpetition Borrowing Base.*** The "Borrowing Base" as that term is defined in the Postpetition Revolving Loan Credit Agreement (determined with respect to all applicable prepetition and postpetition property of the Debtors), which shall include an amount of availability predicated upon the Permitted Overadvance.

31. ***Postpetition Revolving Loan Agent.*** Wells Fargo Capital Finance, LLC, in its capacity as agent under the Postpetition Revolving Loan Documents.

32. ***Postpetition Revolving Loan Charges.*** Interest at the applicable rate of interest under the Postpetition Revolving Loan Documents and the closing fee described in the Postpetition Revolving Loan Documents, all reasonable fees, costs, and expenses provided for in the Postpetition Loan Documents, including those actually incurred by and invoiced to the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders in connection with the Postpetition Revolving Loan Debt (regardless of whether any such fees, costs, interest and other charges are included in the Budget), and all other amounts due under the Postpetition Revolving Loan Documents.

33. ***Postpetition Revolving Loan Collateral.*** All of the real and personal property of Debtors and their respective estates of any description whatsoever, wherever located and whenever arising or acquired, including all cash, accounts, inventory, equipment, fixtures, chattel paper, general intangibles, all leaseholds, all commercial torts, all interests in any joint venture, all licenses and permits, and all proceeds, rents, issues, profits and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any of the foregoing, but in all events excluding the Avoidance Actions until entry of the Final Order.

34. ***Postpetition Revolving Loan Commitment.*** \$85,000,000.

35. ***Postpetition Revolving Loan Credit Agreement.*** That certain Debtor-In-Possession Credit Agreement dated as of June [10], 2015 by and among Boomerang Tube, LLC, the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders, as amended, modified, supplemented, replaced or refinanced from time to time.

36. ***Postpetition Revolving Loan Debt.*** All indebtedness or obligations of Debtors to the Postpetition Revolving Loan Agent and the Postpetition Revolving Loan Lenders incurred on or after the Filing Date pursuant to this Order or otherwise, including, without limitation, all "Obligations" (as that term is defined in the Postpetition Revolving Loan Credit Agreement), including, without limitation, any advances made by the Postpetition Revolving Loan Agent to pay the Carveout.

37. ***Postpetition Revolving Loan Lenders.*** The lenders party to the Postpetition Revolving Loan Credit Agreement.

38. ***Postpetition Revolving Loan Liens.*** Priority Liens in the Postpetition Revolving Loan Collateral, subject only to the Prepetition Priority ABL Liens, the Prepetition Revolving Loan Liens, the Permitted Priority Liens, and the Term Loan Liens (solely with respect to the Debtors' property of the categories described in the definition of Prepetition Term Loan Collateral).

39. ***Postpetition Revolving Loan Documents.*** The "Loan Documents" as that term is defined in the Postpetition Revolving Loan Credit Agreement.

40. ***Postpetition Term Loan Agent.*** Cortland Capital Market Services LLC, in its capacity as administrative agent for the Postpetition Term Loan Lenders under the Postpetition Term Loan Credit Agreement.

41. ***Postpetition Term Loan Credit Agreement.*** That certain Debtor-in-Possession Credit Agreement dated as of June [10], 2015, by and among Borrower, Postpetition Term Loan Agent and Postpetition Term Loan Lenders, as amended, modified, supplemented, replaced or refinanced from time to time.

42. ***Postpetition Term Loan Debt.*** Collectively, the "DIP Facility Obligations" as that term is defined in the Postpetition Term Loan Credit Agreement.

43. ***Postpetition Term Loan Lenders.*** The lenders party to the Postpetition Term Loan Credit Agreement.

44. ***Postpetition Term Loan Liens.*** The security interests of Postpetition Term Loan Agent securing the Postpetition Term Loan Debt.

45. ***Prepetition First Lien Term Loan Agent.*** Cortland Capital Market Services LLC, in its capacity as administrative agent for the Prepetition First Lien Term Loan Lenders under the Prepetition First Lien Term Loan Credit Agreement.

46. ***Prepetition First Lien Term Loan Credit Agreement.*** That certain Credit Agreement dated as of April 6, 2015, by and among Borrower, Prepetition First Lien Term Loan

Agent and Prepetition First Lien Term Loan Lenders, as amended, modified, supplemented, replaced or refinanced from time to time.

47. ***Prepetition First Lien Term Loan Debt.*** Collectively, the "First Lien Obligations" as that term is defined in the Prepetition First Lien Term Loan Credit Agreement.

48. ***Prepetition First Lien Term Loan Lenders.*** The lenders party to the Prepetition First Lien Term Loan Credit Agreement.

49. ***Prepetition First Lien Term Loan Liens.*** The security interests of Prepetition First Lien Term Loan Agent in the Prepetition Term Loan Collateral.

50. ***Prepetition Intercreditor Agreement.*** That certain Amended and Restated Intercreditor Agreement dated as of April 6, 2015, by and among the Debtors, the Prepetition Revolving Loan Agent, Prepetition First Lien Term Loan Agent and Prepetition Second Lien Term Loan Agent, as amended, supplemented or otherwise modified from time to time.

51. ***Prepetition Priority ABL Collateral.*** Collectively, the Debtors' property of the categories described in the definition of "Term Collateral" in the Prepetition Intercreditor Agreement that secure the Prepetition Priority ABL Debt.

52. ***Prepetition Priority ABL Debt.*** Collectively, all "Priority ABL Obligations" as that term is defined in the Prepetition Intercreditor Agreement.

53. ***Prepetition Priority ABL Liens.*** The Prepetition Revolving Loan Agent's liens and security interests in the Prepetition Priority ABL Collateral, which liens and security interests are subject only to Permitted Priority Liens.

54. ***Prepetition Revolving Loan Agent.*** Wells Fargo Capital Finance, LLC, in its capacity as agent under the Prepetition Revolving Loan Documents.

55. ***Prepetition Revolving Loan Collateral.*** Collectively, (a) the Debtors' property of the categories described in the definition of "Working Capital Collateral" in the Prepetition Intercreditor Agreement that secure the Prepetition Revolving Loan Debt, and (b) the Prepetition Priority ABL Collateral.

56. ***Prepetition Revolving Loan Credit Agreement.*** That certain Amended and Restated Credit Agreement, dated as of October 11, 2012, by and among the Boomerang Tube, LLC, the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders, as amended, modified, supplemented, replaced or refinanced from time to time.

57. ***Prepetition Revolving Loan Debt.*** Collectively, all "Obligations" as that term is defined in the Prepetition Revolving Loan Credit Agreement (including, without limitation, all Prepetition Priority ABL Debt), plus any Allowable 506(b) Amounts.

58. ***Prepetition Revolving Loan Documents.*** The "Loan Documents" as that term is defined in the Prepetition Revolving Loan Credit Agreement.

59. ***Prepetition Revolving Loan Guaranty.*** That certain General Continuing Guaranty, dated as of December 10, 2010, by Guarantors in favor of the Prepetition Revolving Loan Agent and the Prepetition Revolving Loan Lenders.

60. ***Prepetition Revolving Loan Lenders.*** The lenders party to the Prepetition Revolving Loan Credit Agreement.

61. ***Prepetition Revolving Loan Liens.*** The Prepetition Revolving Loan Agent's liens and security interests in the Prepetition Revolving Loan Collateral under the Prepetition Revolving Loan Documents and applicable law, which liens and security interests are subject only to Permitted Priority Liens.

62. ***Prepetition Second Lien Term Loan Agent.*** Cortland Capital Market Services LLC, in its capacity as administrative agent for the Prepetition Second Lien Term Loan Lenders under the Prepetition Second Lien Term Loan Credit Agreement.

63. ***Prepetition Second Lien Term Loan Credit Agreement.*** That certain Credit Agreement dated as of October 11, 2012, by and among Borrower, Prepetition Second Lien Term Loan Agent and Prepetition Second Lien Term Loan Lenders, as amended, modified, supplemented, replaced or refinanced from time to time.

64. ***Prepetition Second Lien Term Loan Debt.*** Collectively, the "Second Lien Obligations" as that term is defined in the Prepetition Second Lien Term Loan Credit Agreement.

65. ***Prepetition Second Lien Term Loan Lenders.*** The lenders party to the Prepetition Second Lien Term Loan Credit Agreement.

66. ***Prepetition Second Lien Term Loan Liens.*** The security interests of Prepetition Second Lien Term Loan Agent in the Prepetition Term Loan Collateral.

67. ***Prepetition Term Loan Collateral.*** Collectively, the Debtors' property of the categories described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement that secure the Prepetition Term Loan Debt.

68. ***Prepetition Third Party Collateral Documents.*** Collectively, Debtors' deposit account control agreements, leases, licenses, landlord agreements, warehouse agreements, bailment agreements, insurance policies, contracts or other similar agreements in which the Prepetition Revolving Loan Agent has an interest or an agreement in its favor with the Debtor's applicable contract counterparty.

69. ***Priority Liens.*** Liens which are first priority (except as expressly set forth in this Order), properly perfected, valid and enforceable security interests, which are not subject to any claims, counterclaims, defenses, setoff, recoupment or deduction, and which are otherwise unavoidable and not subject to recharacterization or subordination pursuant to any provision of the Code, any agreement, or applicable nonbankruptcy law.

70. ***Replacement Liens.*** Solely to the extent of any diminution in value of the liens and security interests of the Prepetition Revolving Loan Agent and the Prepetition

Revolving Loan Lenders in the Prepetition Revolving Loan Collateral after the Filing Date, Priority Liens in the Postpetition Revolving Loan Collateral granted to the Prepetition Revolving Loan Agent pursuant to this Order, but (a) subject only to the Prepetition Revolving Loan Liens and the Permitted Priority Liens in all respects, and (b) in respect of all categories of the Debtors' property described in the definition of "Term Loan Collateral" in the Prepetition Intercreditor Agreement, also subject to the Term Loan Liens.

71. ***Sponsor Guaranteed Amount.*** \$500,000 of the principal amount of the Prepetition Revolving Loan Debt that is guaranteed by Access Tubulars, LLC pursuant to that certain Limited Sponsor Guaranty, dated as of March 25, 2015, as amended, modified, supplemented or replaced from time to time.

72. ***Superpriority Claim.*** The definition for such term set forth in Paragraph 3(d)(i) of this Order.

73. ***Support Agreement.*** That certain Plan Support Agreement, dated as of June 8, 2015, by and among the Debtors, Prepetition Revolving Loan Agent, Prepetition Revolving Loan Lenders, Prepetition First Lien Term Loan Agent, Prepetition First Lien Term Loan Lenders, Prepetition Second Lien Term Loan Agent, Prepetition Second Lien Term Loan Lenders, Access Tubulars, LLC and Access Tubular Lender, LLC, as amended, modified, supplemented or replaced from time to time.

74. ***Term Loan Liens.*** Collectively, the Prepetition First Lien Term Loan Liens, the Prepetition Second Lien Term Loan Liens, the replacement liens of the Prepetition Term Loan Agent, and the Postpetition Term Loan Liens.

75. ***Termination Date.*** The earliest to occur of: (a) the date that is one hundred and fifty (150) days after Filing Date, 2015, (b) the consummation of any sale of all or substantially all of the Postpetition Revolving Loan Collateral of the Debtors pursuant to Code § 363, (c) if the Final Order has not been entered, the date that is forty five (45) calendar days after the Filing Date and (d) upon notice from the Postpetition Revolving Loan Agent to the Debtors, the Prepetition Term Loan Agent, any Committee, and their respective counsel of the existence of the occurrence of an Event of Default.

76. ***Trustee.*** Any trustee appointed or elected in the Cases.

EXHIBIT B

BUDGET

[attached]

EXHIBIT 1

ABL DIP CREDIT AGREEMENT

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

by and among

BOOMERANG TUBE, LLC

as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

and

WELLS FARGO CAPITAL FINANCE, LLC

as the Agent

Dated as of June 10, 2015

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), is entered into as of June 10, 2015, by and among the lenders identified on the signature pages hereof (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, as agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and **BOOMERANG TUBE, LLC**, a Delaware limited liability company (as a debtor and debtor-in-possession, "Borrower").

WHEREAS, on June 10, 2015 (the "Filing Date"), Borrower and Guarantors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the District of Delaware (together with any other court having competent jurisdiction over the Bankruptcy Case from time to time, the "Bankruptcy Court");

WHEREAS, Borrower and Guarantors are continuing to operate their business and manage their property as debtors-in-possession under Section 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrower has requested that Lenders provide a secured revolving credit facility (the "DIP Revolving Facility") to Borrower in order to (i) refinance certain Existing Secured Obligations upon entry of the Final Order, (ii) fund certain fees and expenses associated with the DIP Revolving Facility, (iii) provide payments of "adequate protection" in favor of the Existing Lenders in accordance with the Financing Order and (iv) fund certain of Borrower's administrative expenses as debtor and debtor-in-possession under the Bankruptcy Code in accordance with the Budget; and

WHEREAS, the Lenders are willing to make available to Borrower such postpetition loans, other extensions of credit and financial accommodations upon the terms and subject to the conditions set forth herein.

The parties agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1. **Definitions.**

Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. **Accounting Terms.**

All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if Borrower notifies Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Borrower that the Required Lenders request an amendment to any provision

hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon by Borrower and Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

1.3. **Code.**

Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction.**

Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. "Paid in Full", "Payment in Full" or any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or, (a) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, and (b) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other

than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Schedules and Exhibits.**

All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. **LOAN AND TERMS OF PAYMENT.**

2.1. **Revolver Advances.**

(a) Subject to the terms and conditions of this Agreement, during the period commencing on the Closing Date and ending upon the termination of the Revolver Commitments, each Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("Advances") to Borrower in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to *the lesser of*:

(A) the Maximum Revolver Amount *less* the sum of, without duplication, (1) the Letter of Credit Usage at such time, *plus* (2) the amount of any Reinstated Existing Secured Obligations, *plus* (3) the amount of any Existing Secured Obligations accrued prior to the Filing Date and then outstanding, *plus* (4) the amount of any Existing Secured Obligations accrued on or after the Filing Date and then outstanding solely to the extent such Existing Secured Obligations are payable but not yet paid or charged to the Loan Account as of the date of determination, and

(B) the Borrowing Base at such time *less* the sum of, without duplication, (1) the Letter of Credit Usage at such time, *plus* (2) the amount of any Reinstated Existing Secured Obligations, *plus* (3) the amount of any Existing Secured Obligations accrued prior to the Filing Date and then outstanding, *plus* (4) the amount of any Existing Secured Obligations accrued on or after the Filing Date and then outstanding solely to the extent such Existing Secured Obligations are payable but not yet paid or charged to the Loan Account as of the date of determination.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement (including, without limitation, Sections 2.3 and 2.4 below), reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued thereon, shall be due and payable on the

Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the Borrowing Base or the Maximum Revolver Amount, including, without limitation, for purposes of Section 2.11(a), in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate, including reserves (i) in an amount equal to the Bank Product Reserve Amount, (ii) with respect to (A) sums that Borrower or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, and (B) amounts owing by Borrower or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien which is a permitted purchase money Lien or the interest of a lessor under a Capital Lease), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral, (iii) with respect to the Agent's or Lenders' obligations in respect of the accrued Carveout, and (iv) with respect to other accrued but unpaid administrative expense claims allowed or allowable in the Bankruptcy Case; provided, however, that Agent may establish any reserves of the type set forth in clauses (iii) and (iv) only to the extent such payments are required or will be required to be paid at any time from the proceeds of any Borrowing or the Collateral and, in the case of reserves on account of the Carveout, only in the event the Borrower draws an Incremental Loan Amount. The amount of any reserve established under this Section 2.1(c) shall bear a reasonable relationship to the event, condition or circumstance that is the basis for the reserve as determined by Agent in its Permitted Discretion and shall not be duplicative of other reserves factored in the formula of the Borrowing Base.

2.2. [Reserved].

2.3. Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent. Unless Swing Lender is not obligated to make a Swing Loan pursuant to Section 2.3(b) below, such notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day that is the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day; provided, however, that if Swing Lender is not obligated to make a Swing Loan as to a requested Borrowing, such notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day prior to the date that is the requested Funding Date. If Borrower is requesting any Advances constituting Incremental Loan Amounts, such notice must be accompanied by written consent of the Term Debt Agent of such requested Borrowing in form and substance reasonably acceptable to Agent. At Agent's election, in lieu of delivering the above-described written request (other than in respect of the Incremental Loan Amount), any Authorized Person may give Agent telephonic notice of such request by the required time. In

such circumstances, Borrower agrees that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) **Making of Swing Loans.** In the case of a request for an Advance and so long as Swing Lender, in its sole discretion, shall agree to make a Swing Loan, Swing Lender shall make an Advance in the amount of such requested Borrowing (any such Advance made solely by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and such Advances being referred to as "Swing Loans") available to Borrower on the Funding Date applicable thereto by transferring immediately available funds to the Designated Account. Anything contained herein to the contrary notwithstanding, the Swing Lender may, but shall not be obligated to, make Swing Loans at any time that one or more of the Lenders is a Defaulting Lender, unless such Swing Loan is fully supported as result of the following: (i) such Defaulting Lender's Pro Rata Share of such Swing Loan shall be reallocated among all other Lenders with a Revolver Commitment that are non-Defaulting Lenders in proportion with their Pro Rata Shares of the Revolver Commitment, but only to the extent that, after giving effect to such reallocation, Revolver Usage does not exceed the sum of all such non-Defaulting Lenders' Pro Rata Shares of the Revolver Commitment; and (ii) to the extent that the amount of outstanding Swing Loans exceeds the amount that is permitted to be reallocated pursuant to the immediately preceding clause (i), Borrower shall have provided cash collateral to Agent to hold on behalf of Borrower, on terms and conditions reasonably satisfactory to Lenders with Revolver Commitments and Agent, in an amount equal to such excess. In the event that a Defaulting Lender ceases to be a Defaulting Lender then the portion of such Defaulting Lender's Pro Rata Share of any Swing Loan reallocated to non-Defaulting Lenders pursuant to this Section 2.3(b) shall be reallocated to such previously Defaulting Lender. Each Swing Loan shall be deemed to be an Advance hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Advances, except that all payments on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Advances and Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(c) **Making of Loans.**

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders, not later than 1:00 p.m. (California time) on the Business Day immediately preceding the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately

available funds, to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Advances, Agent shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, however, that, subject to the provisions of Section 2.3(d)(ii), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:00 a.m. (California time) on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrower the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If any Lender shall not have made its full amount available to Agent in immediately available funds and if Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Borrower of such failure to fund and, upon demand by Agent, Borrower shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing.

(d) **[Reserved]**.

(e) **Settlement.** It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Advances and the Swing Loans shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, and (2) with respect to Borrower's or its Subsidiaries' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a

Settlement Date shall include a summary statement of the amount of outstanding Advances, and Swing Loans, for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Advances (including Swing Loans) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Advances (including Swing Loans) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans), and (z) if the amount of the Advances (including Swing Loans) made by a Lender is less than such Lender's Pro Rata Share of the Advances (including Swing Loans) as of a Settlement Date, such Lender shall no later than 12:00 p.m. (California time) on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans and, together with the portion of such Swing Loans representing Swing Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances and is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, and Swing Loans, as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrower and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to the Swing Loans. Between Settlement Dates, Agent, to the extent no Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Agent that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections or payments of Borrower or its Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Advances of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, and each Lender (subject to the effect of agreements between Agent and individual Lenders) with respect to the Advances other than

Swing Loans, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation.** Agent, as a non-fiduciary agent for Borrower, shall maintain a register showing the principal amount of the Advances, owing to each Lender, including the Swing Loans owing to Swing Lender, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders.** Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to Agent for the Defaulting Lender's benefit or any Collections or proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, repaid by the Defaulting Lender, (B) second, to the Issuing Lender, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, repaid by the Defaulting Lender, (C) third, to each non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of an Advance (or other funding obligation) was funded by such other non-Defaulting Lender), (D) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrower as if such Defaulting Lender had made its portion of Advances (or other funding obligations) hereunder, and (E) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(ii). Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which the non-Defaulting Lenders, Agent, and Borrower shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder. The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties

and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrower, at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of the Letters of Credit); provided, however, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(h) **Independent Obligations.** All Advances (other than Swing Loans) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments.**

(a) **Payments by Borrower.**

(i) Except as otherwise expressly provided herein, all payments by Borrower shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 11:00 a.m. (California time) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, Agent may assume that Borrower has made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower does not make

such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application.**

(i) All payments to be made hereunder by Borrower shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, except as otherwise provided herein with respect to Defaulting Lenders, as set forth in Section 2.4(b)(ii) below.

(ii) Except as otherwise provided herein with respect to Defaulting Lenders and the terms of Section 2.4(b)(vi), all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to reduce the balance of the Existing Secured Obligations (other than the Sponsor Guaranteed Amount and the Priority ABL Obligations),

(B) second, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

(C) third, to pay any fees or premiums then due to Agent under the Loan Documents until paid in full,

(D) fourth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(E) fifth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(F) sixth, to pay interest accrued in respect of the Swing Loans until paid in full,

(G) seventh, to pay the principal of all Swing Loans until paid in full,

(H) eighth, ratably, to pay interest accrued in respect of the Advances until paid in full,

(I) ninth, ratably (i) to pay the principal of all Advances until paid in full, (ii) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and

when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof), and (iii) up to the Bank Product Reserve Amount in the aggregate (after taking into account any amounts previously paid pursuant to this clause (iii)) to the Bank Product Providers, with the amount for any Bank Product Provider to be based upon amounts then certified by such Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations up to the Bank Product Reserve Amount established by Agent in respect of such Bank Product,

(J) tenth, to pay any other Obligations other than Obligations owed to Defaulting Lenders, Priority ABL Obligations, and the Sponsor Guaranteed Amount (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof),

(K) eleventh, ratably to pay any Obligations owed to Defaulting Lenders;

(L) twelfth, to pay the Priority ABL Obligations;

(M) thirteenth, to pay the Sponsor Guaranteed Amount; and

(N) fourteenth, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(iv) [Reserved].

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds (or, (a) in the case of contingent reimbursement Obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, and (b) in the case of Bank Product Obligations (other than Hedge Obligations), providing Bank Product Collateralization) of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any

Insolvency Proceeding, in each case other than (x) unasserted contingent indemnification Obligations, (y) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (z) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid.

(vi) Notwithstanding anything to the contrary herein, proceeds of the Term Debt Collateral that secure the Priority ABL Obligations and are received by Agent in accordance with the Existing Term Debt Intercreditor Agreement shall be applied first and only to the Priority ABL Obligations until paid in full.

(vii) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Commitments.**

(i) **Revolver Commitments.** The Revolver Commitments shall terminate on the Maturity Date. With not less than 3 Business Days' written notice to Agent, Borrower may reduce the Revolver Commitments to an amount not less than the sum of (A) the Revolver Usage as of such date, plus (B) the principal amount of all Advances not yet made as to which a request has been given by Borrower under Section 2.3(a), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrower pursuant to Section 2.11(a) plus (D) the amount of all accrued and outstanding Existing Secured Obligations as of such date. Each such reduction shall be in an amount which is not less than \$5,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than \$5,000,000), shall be made by providing not less than 5 Business Days prior written notice to Agent and shall be irrevocable. Once reduced, the Revolver Commitments may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its Pro Rata Share thereof. Any notice of reduction or termination may be conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities). Notwithstanding the foregoing, upon the reduction of the Revolver Commitments to zero or the early termination of the Revolver Commitments prior to the Maturity Date, Borrower shall pay to Agent, for the ratable benefit of Lenders, a prepayment premium in an amount equal to \$1,250,000; provided, that such prepayment premium shall not be due if the Revolver Commitments are reduced substantially to zero and any outstanding Obligations are Paid in Full with the proceeds of any sale of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code.

(d) **Optional Prepayments.**

(i) **Advances.** With not less than 3 Business Days' written notice to Agent, Borrower may prepay, subject to application of any such prepayment in accordance with Section 2.4(b)(iii) any Advance at any time in whole or in part.

(e) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, (A) the Revolver Usage on such date plus the amount of any Existing Secured Obligations accrued prior to the Filing Date and then outstanding plus the amount of any Existing Secured Obligations accrued on or after the Filing Date and then outstanding solely to the extent such Existing Secured Obligations are payable but not yet paid or charged to the Loan Account as of such date exceeds (B) the Borrowing Base (such excess being referred to as the "Borrowing Base Excess"), then Borrower shall, subject to the Financing Order, immediately prepay the Obligations in accordance with Section 2.4(b)(ii) in an amount sufficient to eliminate the Borrowing Base Excess.

(ii) **Dispositions.** Within 5 Business Days of the date of receipt by Borrower or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or disposition by Borrower or any of its Subsidiaries of Collateral (including casualty losses or condemnations but excluding sales or dispositions of Collateral which qualify as Permitted Dispositions under clauses (a), (c), (d), (h) (to the extent constituting Term Debt Collateral), (i), or (m) of the definition of Permitted Dispositions), subject to the Financing Order and the Existing Term Debt Intercreditor Agreement, Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(b)(ii) in an amount equal to 100% of such Net Cash Proceeds of the Collateral (including condemnation awards and payments in lieu thereof) received by such Person in connection with such sales or dispositions. Nothing contained in this Section 2.4(e)(ii) shall permit Borrower or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) **Extraordinary Receipts.** Within 1 Business Day of the date of receipt by Borrower or any of its Subsidiaries of any Extraordinary Receipts in respect of Collateral, subject to the Financing Order and the Existing Term Debt Intercreditor Agreement, Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(b)(ii) in an amount equal to 100% of such Extraordinary Receipts.

(iv) **Disgorgement.** In the event that the Lenders are required to repay or disgorge to Borrower or any representatives of the Borrower's estate (as agents, with derivative standing or otherwise) all or any portion of the Existing Secured Obligations authorized and directed to be repaid pursuant to the Financing Order, or any payment on account of the Existing Secured Obligations, Existing First Lien Term Debt or Existing Second Lien Term Debt made to any Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or any applicable state or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, Borrower shall prepay the outstanding principal amount of the

Advances in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by Borrower or any representative of the Borrower's estate (such amounts to be applied as set forth in Section 2.4(b)(ii)); provided, however, that any Avoided Payments in respect of "Working Capital Obligations" (as such term is defined in the Existing Term Debt Intercreditor Agreement) shall first be used to repay the principal amount of Advances to the extent proceeds thereof were used to repay such Existing Secured Obligations; and provided further, that any Existing Secured Obligations reinstated as a result of any Avoided Payments shall share the same rank of repayment as set forth in Section 2.4(b)(ii) with respect to Advances, Letter of Credit Usage and Bank Products as if Advances, Letters of Credit Usage and Bank Products hereunder.

Payments. Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement.

2.5. **[Reserved]**.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

(i) if the relevant Obligation is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(ii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrower shall pay Agent (for the ratable benefit of the Lenders with a Revolver Commitment, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.11(e)) which shall accrue at a per annum rate equal to the LIBOR Rate Margin for Advances times the Daily Balance of the undrawn amount of all outstanding Letters of Credit.

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of the Required Lenders,

(i) all Advances, together with any other Obligations charged to the Loan Account pursuant to the terms hereof, shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable thereunder, and

(ii) the Letter of Credit fee provided for in Section 2.6(b) shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10 or Section 2.12(a), all interest, all Letter of Credit fees, all other fees payable hereunder or under any of the other Loan Documents, and all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first Business Day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge all interest, Letter of Credit fees, and all other fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents (in each case, as and when incurred), all charges, commissions, fees, and costs provided for in Section 2.11(e) (as and when accrued or incurred), all fees and costs provided for in Section 2.10 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products) to the Loan Account, which amounts thereafter shall constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances that are Base Rate Loans. Any interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement that are charged to the Loan Account shall thereafter constitute Advances hereunder and shall initially accrue interest at the rate then applicable to Advances that are LIBOR Rate Loans (unless and until converted into Base Rate Loans in accordance with the terms of this Agreement).

(e) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7. **Crediting Payments.**

The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower

shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 11:00 a.m. (California time). If any payment item is received into Agent's Account on a non-Business Day or after 11:00 a.m. (California time) on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8. **Designated Account.**

Agent is authorized to make the Advances, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrower, any Advance or Swing Loan requested by Borrower and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations.**

Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Advances (including Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrower or for Borrower's account, the Letters of Credit issued or arranged by Issuing Lender for Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrower or for Borrower's account. Agent shall render monthly statements regarding the Loan Account to Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Lender Group unless, within 45 days after receipt thereof by Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements; provided, that Borrower may deliver to Agent written objection with regard to any manifest error contained in any such statements at any time.

2.10. **Fees.**

Borrower shall pay to Agent,

(a) for the ratable amount of those Lenders with Revolver Commitments, a closing fee in an amount equal to \$300,000, \$150,000 of which shall be fully earned, due and payable upon entry of the Interim Order and \$150,000 of which shall be fully earned, due and payable upon the first funding of an Incremental Loan Amount in accordance with Section 2.3(a); and

(b) for the ratable account of those Lenders with Revolver Commitments, on the first Business Day of each month from and after the Closing Date up to the first Business Day of the month prior to the Payoff Date and on the Payoff Date, an unused line fee in an amount equal to the Applicable Unused Revolver Fee times the result of (i) the aggregate amount of the Revolver Commitments, less (ii) the sum of the average Daily Balance of the Revolver Usage and Existing Secured Obligations during the immediately preceding month (or portion thereof).

2.11. Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, during the period commencing on the Closing Date and ending upon the termination of the Revolver Commitments, upon the request of Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Letter of Credit. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrower shall be deemed to have requested that Issuing Lender issue or that an Underlying Issuer issue the requested Letter of Credit and to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be issued by an Underlying Issuer (it being expressly acknowledged and agreed by Borrower that Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit). Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall specify (i) the amount of such Letter of Credit, (ii) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the expiration date of such Letter of Credit, (iv) the name and address of the beneficiary of the Letter of Credit, and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Letter of Credit or to issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, that supports the obligations of Borrower or its Subsidiaries (1) in respect of an employment contract, or (2) at any time that one or more of the Lenders (other than Agent in its capacity as a Lender) is a Defaulting Lender, unless such Letter of Credit or Reimbursement Undertaking is fully supported as result of the following: (i) such Defaulting Lender's Pro Rata Share of such Letter of Credit or Reimbursement Undertaking shall be reallocated among all other Lenders with a

Revolver Commitment that are non-Defaulting Lenders in proportion with their Pro Rata Shares of the Revolver Commitment, but only to the extent that, after giving effect to such reallocation, Revolver Usage does not exceed the sum of all such non-Defaulting Lenders' Pro Rata Share of the Revolver Commitment; and (ii) to the extent that such Letter of Credit or Reimbursement Undertaking exceeds the amount that is permitted to be reallocated pursuant to the immediately preceding clause (i), Borrower shall have provided cash collateral to Agent to hold on behalf of Borrower, on terms and conditions reasonably satisfactory to Issuing Lender and Agent, in an amount equal to such excess. Any Letter of Credit fee payable pursuant to Section 2.6(b) otherwise payable to a Defaulting Lender with respect to any portion of such Defaulting Lender's Pro Rata Share in any Letter of Credit reallocated pursuant to the preceding sentence shall be payable instead to the non-Defaulting Lenders in proportion to their Pro Rata Share of such non-Defaulting Lenders' Pro Rata Share in any Letter of Credit so allocated to them. In the event that a Defaulting Lender ceases to be a Defaulting Lender then the portion of such Defaulting Lender's Pro Rata Share in any Letter of Credit or Reimbursement Undertaking reallocated to non-Defaulting Lenders pursuant to this Section 2.11(a) shall be reallocated to such previously Defaulting Lender and, from and after (and in respect of Letter of Credit fees pursuant to Section 2.6(b) accruing from and after) the date of such reallocation, such previously Defaulting Lender shall be entitled to receive any Letter of Credit fees payable in respect of such previously Defaulting Lender's Pro Rata Share in any Letter of Credit or Reimbursement Undertaking previously reallocated to the non-Defaulting- Lenders.

The Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

- (i) the Letter of Credit Usage would exceed the Borrowing Base *less* the outstanding amount of Advances (inclusive of Swing Loans), or
- (ii) the Letter of Credit Usage would exceed \$2,000,000, or
- (iii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the sum of (A) the outstanding amount of Advances (including Swing Loans), (B) the amount of any Existing Secured Obligations accrued prior to the Filing Date and then outstanding, (C) the amount of any Existing Secured Obligations accrued on or after the Filing Date and then outstanding solely to the extent such Existing Secured Obligations are payable but not yet paid or charged to the Loan Account as of the date of determination and (D) the amount of any Reinstated Existing Secured Obligations.

Each Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Borrower shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the date such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, initially, shall bear interest at the rate then applicable to Advances that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be an Advance hereunder, Borrower's obligation to

pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be discharged and replaced by the resulting Advance. Promptly following receipt by Agent of any payment from Borrower pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(b) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(a), each Lender with a Revolver Commitment agrees to fund its Pro Rata Share of any Advance deemed made pursuant to Section 2.11(a) on the same terms and conditions as if Borrower had requested the amount thereof as an Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or a Reimbursement Undertaking (or an amendment to a Letter of Credit or a Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders with Revolver Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Revolver Commitment, and each Lender with a Revolver Commitment shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Letter of Credit or Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrower on the date due as provided in Section 2.11(a), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender with a Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(b) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(c) Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, expense, or liability (other than Taxes, which shall be governed by Section 16), and reasonable attorneys fees incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, however, that Borrower shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Borrower understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any

error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto, unless such error, negligence or mistake is caused by the gross negligence or willful misconduct of Issuing Lender, the Lender Group, or any Underlying Issuer. Borrower understands that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Borrower against such Underlying Issuer. Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Borrower shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability to the extent that it is caused by the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group. Borrower hereby acknowledges and agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(d) Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(e) Any and all issuance charges, usage charges, commissions, fees, and costs incurred by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately by Borrower to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Borrower that, as of the Closing Date, the usage charge imposed by the Underlying Issuer is .825% per annum times the undrawn amount of each Underlying Letter of Credit, that such usage charge may be changed from time to time, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(f) If by reason of (i) any change after the Closing Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or

(ii) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, guaranteeing, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrower, and Borrower shall pay on demand therefor, such amounts as Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Borrower shall not be required to provide any compensation pursuant to this Section 2.11(f) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrower; provided further, however, that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(f), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(g) Schedule 2.11(g) hereto contains a list of all letters of credit outstanding on the Filing Date pursuant to the Existing Loan Agreement. For the period from and after the effective date of the Interim Order, each such letter of credit set forth on Schedule 2.11(g), including any extension or renewal thereof, that remains outstanding on the effective date of the Interim Order shall be deemed Letters of Credit, re-issued hereunder for the account of Borrowers, for all purposes of this Agreement, including, without limitation, calculations of Availability, the Borrowing Base, Letter of Credit Usage and all other fees and expenses relating to the Letters of Credit and Bank Products (including any related indemnification obligations). Issuing Lender hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by the issuers of such letters of credit. Borrower agrees to execute and deliver such documentation, if any, requested by Agent, or an Issuing Lender to evidence, record, or further the foregoing deemed re-issuance. Schedule 2.11(g) hereto also contains a list of all "Bank Products" (as defined in the Existing Loan Agreement) in respect of "Bank Product Obligations" (as defined in the Existing Loan Agreement) outstanding on the Filing Date. For the period from and after the effective date of the Interim Order, each such bank product set forth on Schedule 2.11(g), including any extension or renewal thereof, that remains outstanding on the effective date of the Interim Order shall be deemed Bank Products for the account of Borrowers, for all purposes of this Agreement, including, without limitation, calculations of Availability, the Borrowing Base and all other fees and expenses relating to the Bank Products (including any related indemnification obligations). Borrower agrees to execute and deliver such documentation, if any, requested by Agent, or a Bank Product Provider to evidence, record, or further the foregoing bank products.

2.12. LIBOR Option.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrower shall have the option, subject to Section 2.12(b)

below (the "LIBOR Option") to have interest on all or a portion of the Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrower properly has exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, at the written election of the Required Lenders, Borrower no longer shall have the option to request that Advances bear interest at a rate based upon the LIBOR Rate.

(b) **LIBOR Election.**

(i) Borrower may, at any time and from time to time, so long as Borrower has not received a notice from Agent, after the occurrence and during the continuance of an Event of Default, of the election of the Required Lenders to terminate the right of Borrower to exercise the LIBOR Option during the continuance of such Event of Default, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. (California time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrower's election of the LIBOR Option for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. (California time) on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrower. In connection with each LIBOR Rate Loan, Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrower setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrower shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of Borrower, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the

application of payments to any LIBOR Rate Loan and that, in the event that Agent does not defer such application, Borrower shall be obligated to pay any resulting Funding Losses.

(iii) Borrower shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrower only may exercise the LIBOR Option for proposed LIBOR Rate Loans of at least \$1,000,000.

(c) **Conversion.** Borrower may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of Borrower's and its Subsidiaries' Collections in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) **Special Provisions Applicable to LIBOR Rate.**

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law (other than changes in laws relative to Taxes, which shall be governed by Section 16) occurring subsequent to the commencement of the then applicable Interest Period, including changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender (y) require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (z) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrower and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrower shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13. **Capital Requirements.**

(a) If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change in the interpretation, implementation or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrower and Agent thereof. Following receipt of such notice, Borrower agrees to pay such Lender on demand the amount of such reduction of return on capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Borrower of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. Notwithstanding anything herein to the contrary (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in the implementation thereof, and (z) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervisions (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, rule, regulation or guideline as described in this Section 2.13 regardless of the date enacted, adopted, issued or implemented

(b) If any Lender requests additional or increased costs referred to in Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (any such Lender, an "Affected Lender"), then such Affected Lender

shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(d) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrower agrees to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrower's obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(d) or Section 2.13(a), as applicable, or to enable Borrower to Obtain LIBOR Rate Loans, then Borrower (without prejudice to any amounts then due to such Affected Lender under Section 2.12(d) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(d) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may seek a substitute Lender reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's Commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and Commitments, pursuant to an Assignment and Acceptance Agreement, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

3. **CONDITIONS; TERM OF AGREEMENT.**

3.1. **Conditions Precedent to the Effectiveness of this Agreement.**

The effectiveness of this Agreement is subject to the fulfillment, to the satisfaction of Agent and the Lenders, of each of the conditions precedent set forth on Schedule 3.1.

3.2. **Conditions Precedent to all Extensions of Credit.**

The obligation of the Lender Group (or any member thereof) to make any Advances hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of Borrower or its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (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) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) no injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against Borrower, Agent or any Lender;

(d) no Material Adverse Change shall have occurred since the Closing Date;
and

(e) after 30 days from the Closing Date, the Bankruptcy Court shall have entered (i) the Final Order, in form and substance satisfactory to Agent and Lenders, and (ii) an order after a final hearing approving the incurrence of the Term Debt, in form and substance satisfactory to Agent and Lenders.

3.3. **Maturity.**

This Agreement shall continue in full force and effect for a term ending on the Maturity Date. The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

3.4. **Effect of Maturity.**

On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrower shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrower's sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrower.**

Borrower has the option, at any time upon 3 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent in accordance with Section 2.4(b)(ii) all of the Obligations in full, including, without limitation, the prepayment fee described in Section 2.4(c). Any notice of termination may be

conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities).

4. **REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (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), as of the Closing Date, and shall be true, correct, and complete, in all material respects (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), as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries.**

(a) Each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) [Reserved]

(c) Set forth on Schedule 4.1(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Borrower. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(c), there are no subscriptions, options, warrants, or calls relating to any shares of Borrower's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. Neither Borrower nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of Borrower's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

4.2. **Due Authorization; No Conflict.**

(a) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the

Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries, except to the extent that any such conflict, breach or default could not reasonably be expected to be adverse to the Lenders in any material respect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interestholders or any approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect, and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not reasonably be expected to be adverse to the Lenders in any material respect.

4.3. **Governmental Consents.**

Subject to approval of the Bankruptcy Court pursuant to the Financing Order, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect.

4.4. **Binding Obligations; Perfected Liens.**

(a) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms.

(b) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, Agent's Liens are validly created, perfected and have the priorities set forth in the Financing Order.

4.5. **Title to Assets; No Encumbrances.**

Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of

since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6. Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

(a) The name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries is set forth on Schedule 4.6(a) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of each Loan Party and each of its Subsidiaries is located at the address indicated on Schedule 4.6(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(c) Each Loan Party's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 4.6(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(d) As of the Closing Date, no Loan Party and no Subsidiary of a Loan Party holds any commercial tort claims that exceed \$100,000 in amount, except as set forth on Schedule 4.6(d).

4.7. Litigation.

(a) Other than the Bankruptcy Case, except as set forth on Schedule 4.7(b), there are no actions, suits, or proceedings pending or, to the knowledge of Borrower, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 4.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$500,000 that, as of the Closing Date, is pending or, to the knowledge of Borrower, after due inquiry, threatened against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Loan Parties' and their Subsidiaries in connection with such actions, suits, or proceedings is covered by insurance.

4.8. Compliance with Laws.

No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse

Change, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.9. **No Material Adverse Change.**

All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by a Loan Party to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since the Filing Date, other than the Bankruptcy Case, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to the Loan Parties and their Subsidiaries.

4.10. **Fraudulent Transfer.**

(a) **[Reserved].**

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.11. **Employee Benefits.**

No Loan Party, any of their Subsidiaries, or any of their ERISA Affiliates maintains, or contributes to or has liability with respect to, any Benefit Plan. Except as could not reasonably be expected to cause an Material Adverse Change, (i) each Employee Benefit Plan complies with, and has been operated in accordance with, all applicable laws, including ERISA and the IRC, and the terms of such Employee Benefit Plan; (ii) any Employee Benefit Plan if intended to be qualified under Section 401 of the IRC is so qualified, and (iii) no Loan Party has any liability for damages, fines, penalties, excise taxes, or other similar amounts with respect to such Employee Benefit Plan.

4.12. **Environmental Condition.**

Except where any of the following could not reasonably be expected to result in a Material Adverse Change, (a) to Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrower's knowledge, after due inquiry, no Loan Party's nor any of

its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law is attached or will become attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability.

4.13. **Intellectual Property.**

Each Loan Party and its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted, and attached hereto as Schedule 4.13 (as updated from time to time) is a true, correct, and complete listing of all material trademarks, trade names, copyrights, patents, and licenses as to which Borrower or one of its Subsidiaries is the owner or is an exclusive licensee; provided, however, that Borrower may amend Schedule 4.13 to add additional intellectual property so long as such amendment occurs by written notice to Agent at the time that Borrower provides its Compliance Certificate pursuant to Section 5.1.

4.14. **Leases.**

Each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.15. **Deposit Accounts and Securities Accounts.**

Set forth on Schedule 4.15 (as updated pursuant to the provisions of the Security Agreement from time to time) is a listing of all of the Loan Parties' and their Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16. **Complete Disclosure.**

All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to

state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on June [●], 2015 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrower's good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, that no assurances can be given that such Projections will be realized, and that actual results may differ in a material manner from such Projections).

4.17. **Material Contracts.**

Set forth on Schedule 4.17 (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of the Material Contracts of each Loan Party and its Subsidiaries as of the Filing Date; provided, however, that Borrower may amend Schedule 4.17 to add additional Material Contracts so long as such amendment occurs by written notice to Agent within 5 days of entering into such Material Contract and such Material Contract is contemplated by the Budget and does not otherwise give rise to a Default or Event of Default hereunder. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiary and, to Borrower's knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 6.7(b)), and (c) is not in default due to the action or inaction of the applicable Loan Party or its Subsidiary.

4.18. **Patriot Act.**

To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.19. **Indebtedness.**

Set forth on Schedule 4.19 is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is

to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the maximum aggregate principal amount of such Indebtedness as of the Closing Date.

4.20. **Payment of Taxes.**

Except as otherwise permitted under Section 5.5 and as set forth on Schedule 4.20, all tax returns and reports (other than tax returns and reports which in the aggregate involve tax liability of less than \$100,000) of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable (other than assessments, fees and other charges which in the aggregate do not exceed \$100,000). To the extent consistent with the Budget and the Financing Order, each Loan Party and each of its Subsidiaries have made adequate provision to the extent required by, and in accordance with, GAAP for all taxes not yet due and payable. Except as set forth on Schedule 4.20, Borrower knows of no proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.21. **Margin Stock.**

No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

4.22. **Governmental Regulation.**

No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.23. **OFAC.**

No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with

Sanctioned Persons or Sanctioned Entities. 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.

4.24. **Employee and Labor Matters.**

There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrower, threatened against Borrower or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Borrower or its Subsidiaries which arises out of or under any collective bargaining agreement, except for any pending or threatened complaints or proceedings which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (ii) no strike, labor dispute, labor slowdown, labor stoppage or similar action or grievance pending or threatened in writing against Borrower or its Subsidiaries that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change, or (iii) as of the Closing Date to the knowledge of Borrower, after due inquiry, no union representation question existing with respect to the employees of Borrower or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of Borrower or its Subsidiaries. None of Borrower or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. All material payments due from Borrower or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrower, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.25. **Eligible Accounts.**

As to each Account that is identified by Borrower as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Loan Party's business, (b) owed to a Loan Party, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Agent-discretionary criteria) set forth in the definition of Eligible Accounts.

4.26. **Eligible Inventory.**

As to each item of Inventory that is identified by Borrower as Eligible Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Agent-discretionary criteria) set forth in the definition of Eligible Inventory.

4.27. **Locations of Inventory and Equipment.**

The Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties and their Subsidiaries are not stored with a bailee, warehouseman, or similar party and are located only at, or in-transit between or to, the locations identified on Schedule 4.27 (as such Schedule may be updated pursuant to Section 5.15).

4.28. **Inventory Records.**

Each Loan Party keeps correct and accurate records in all material respects itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.29. **Hedge Agreement.**

On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

4.30. **Matters Relating to Liens and Property Rights.**

The entry of the Financing Order is effective to create in favor of Agent, for the benefit of Lenders, as security for the Obligations, (i) a Lien on all of the Collateral pursuant to Sections 364(c)(2) and (c)(3) of the Bankruptcy Code with the priority set forth in the Financing Order, and (ii) an allowed superpriority administrative expense claim for the Obligations in the Bankruptcy Case pursuant to Section 364(c)(1) of the Bankruptcy Code with the priority set forth in the Financing Order. Except for the Financing Order, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (x) the pledge or grant by Borrower or any of its Subsidiaries of the Liens purported to be created in favor of Agent pursuant to this Agreement or any of the Loan Documents or (y) the exercise by Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to this Agreement, any of the Loan Documents or created or provided for by applicable law), except as may be required in connection with the disposition of any pledged Collateral by laws generally affecting the offering and sale of securities.

4.31. **Budget.**

The Budget was prepared by Borrower's financial personnel in good faith and represents the good faith estimate at such time as to the probable course of Borrower's business and financial performance, over the periods shown therein, subject to the assumptions stated therein.

4.32. **Financing Order.**

The Financing Order is in full force and effect, is not subject to a pending appeal or motion for leave to appeal or other proceeding to set aside such order and has not been reversed, modified, amended, stayed or vacated absent Agent's written consent.

5. **AFFIRMATIVE COVENANTS.**

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties shall and shall cause each of their Subsidiaries to comply with each of the following:

5.1. **Financial Statements, Reports, Certificates.**

Deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein. In addition, Borrower agrees that no Subsidiary of a Loan Party will have a fiscal year different from that of Borrower. In addition, Borrower agrees to maintain a system of accounting that enables Borrower to produce financial statements in accordance with GAAP. Each Loan Party shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to its and its Subsidiaries' sales, and (b) maintain its billing systems/practices substantially as in effect as of the Closing Date provided that material modifications thereto may be made with notice to Agent.

5.2. **Collateral Reporting.**

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, Borrower agrees to cooperate with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

5.3. **Existence.**

Except as otherwise permitted under Section 6.4, at all times maintain and preserve in full force and effect its existence (including being in good standing in its jurisdiction of organization) and all rights and franchises, licenses and permits material to its business.

5.4. **Maintenance of Properties.**

Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty and Permitted Dispositions excepted, and comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

5.5. **Taxes.**

Cause all assessments and taxes with respect to periods after the Filing Date whether real, personal or otherwise, due and payable by, or imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period (including any extension by virtue of the Bankruptcy Case), except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the

Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax. Borrower will and will cause each of its Subsidiaries to make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof reasonably satisfactory to Agent indicating that Borrower and its Subsidiaries have made such payments or deposits.

5.6. **Insurance.**

At Borrower's expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain (with respect to each of the Loan Parties and their Subsidiaries) business interruption, general liability, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies reasonably acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Agent. All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard noncontributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Agent may arrange for such insurance, but at Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Agent prompt notice of any loss exceeding \$500,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be reasonably necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Notwithstanding the foregoing, any failure by any Loan Party to be in compliance with this Subsection 5.6 as of the Closing Date shall not constitute a breach of this Subsection 5.6 provided the Borrower and any Subsidiary Guarantor, as applicable, delivers such certificates or endorsements to Agent within thirty (30) days of the Closing Date (or such longer date acceptable to Agent).

5.7. **Inspection.**

Permit Agent and each of its duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct appraisals and valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Agent may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

5.8. **Compliance with Laws.**

Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

5.9. **Environmental.**

(a) Keep any property either owned or operated by Borrower 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, other than Environmental Liens that do not exceed \$200,000 in the aggregate,

(b) Comply with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests except as could not reasonably be expected to result in a Material Adverse Change,

(c) Promptly notify Agent of any release of which Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Borrower or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law, except as could not reasonably be expected to result in a Material Adverse Change, and

(d) Promptly, but in any event within 5 Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Borrower or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.10. **Disclosure Updates.**

Promptly and in no event later than 5 Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made. The foregoing to the contrary

notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **[Reserved]**.

5.12. **Further Assurances**.

At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if Borrower refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time following the request to do so, Borrower hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's or its Subsidiary's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral and all of the outstanding capital Stock of Borrower's Subsidiaries.

5.13. **Consultant**.

Continue to appoint, retain and engage Zolfo Cooper, LLC (the "Consultant") on terms and conditions reasonably acceptable to Agent, which will include, without limitation, assisting Borrower in the management of its business, preparation of forecasts and projections, and the formulation and implementation of strategic initiatives in connection with the Bankruptcy Case. Borrower hereby and will continue to authorize and instruct the Consultant to (a) share with Agent and Lenders all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and the sale, marketing or reorganization process of the Borrower's business and assets as reasonably requested from time to time, except to the extent access to such information would compromise the Borrower's attorney-client privilege and (b) make Consultant available to Agent and Lenders as reasonably requested by Agent. Borrower will provide the Consultant access to all of the Borrower's books and records, all of Borrower's premises and to Borrower's management as and when deemed reasonably necessary by the Consultant.

5.14. **Material Contracts**.

Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 5.1, provide 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.

5.15. **Location of Inventory and Equipment.**

Keep each Loan Parties' and its Subsidiaries' Inventory and Equipment (other than vehicles and Equipment out for repair and Inventory that is in-transit) only at the locations identified on Schedule 4.27 and their chief executive offices only at the locations identified on Schedule 4.6(b); provided, however, that Borrower may amend Schedule 4.27 or Schedule 4.6(b) so long as such amendment occurs by written notice to Agent not less than 10 days prior to the date on which such Inventory or Equipment is moved to such new location or such chief executive office is relocated and so long as such new location is within the continental United States, and so long as, at the time of such written notification, Borrower provides Agent a Collateral Access Agreement with respect thereto or Agent establishes a Rent Reserve under Section 2.1(c) for such location.

5.16. **Bankruptcy Transaction Milestones.**

Cause the performance and delivery of the items set forth on Schedule 5.16 on or before the dates specified therein with respect to such items.

6. **NEGATIVE COVENANTS.**

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Subsidiaries to do any of the following:

6.1. **Indebtedness.**

Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2. **Liens.**

Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens. Notwithstanding anything to the contrary in this Agreement or other Loan Documents, Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien with priority over the Liens created by the Loan Documents, except the Permitted Priority Liens, the Carveout, the Liens securing the Existing Secured Obligations and, with respect to the Term Debt Collateral, the Liens securing the Existing First Lien Term Debt, the Existing Second Lien Term Debt and the Term Debt.

6.3. **Restrictions on Fundamental Changes.**

(a) Enter into any merger, consolidation, reorganization, or recapitalization except as permitted in the Support Agreement (other than paragraph 11 thereof),

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution) without Agent's prior written consent,

(c) Suspend or go out of a substantial portion of its or their business without Agent's prior written consent, or

(d) Form any new Subsidiary without Agent's prior written consent.

6.4. **Disposal of Assets.**

Other than Permitted Dispositions, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any of Borrower's or its Subsidiaries assets.

6.5. **Change Name.**

Change Borrower's or any of its Subsidiaries' names, organizational identification number, state of organization or organizational identity; provided, however, that Borrower or any of its Subsidiaries may change its name with the prior written consent of Agent of such change.

6.6. **Nature of Business.**

Make any change in the nature of its or their business or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent Borrower and its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.7. **Prepayments and Amendments.**

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1:

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of Borrower or its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, and (B) Existing Secured Obligations and (C) Permitted Intercompany Advances,

(ii) make any principal payment on account of the Existing First Lien Term Debt, Existing Second Lien Term Debt or Term Debt unless repaid from Term Debt or from proceeds of Term Debt Collateral, or

(iii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions, or

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness (including, without limitation, the Existing First Lien Term Debt, the Existing Second Lien Term Debt and the Term Debt) other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, and (C) Indebtedness permitted under clauses (c), (h) and (i) of the definition of Permitted Indebtedness,

(ii) any Material Contract if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders, or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries.

6.8. **[Reserved]**.

6.9. **Restricted Junior Payments.**

Make any Restricted Junior Payment.

6.10. **Accounting Methods.**

Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

6.11. **Investments; Controlled Investments.**

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment.

(b) Other than (i) an aggregate amount of not more than \$50,000 at any one time, in the case of Borrower and its Subsidiaries (other than Foreign Subsidiaries), (ii) amounts deposited into Deposit Accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for Borrower's or its Subsidiaries' employees, (iii) an aggregate amount of not more than \$50,000 at any one time (calculated at current exchange rates) in the case of Subsidiaries of Borrower that are Foreign Subsidiaries, (iv) amounts permitted to be deposited in the TL Deposit Account (as defined in the Existing Term Debt Intercreditor Agreement) pursuant to the Existing Term Debt Intercreditor Agreement, (v) an aggregate amount not to exceed \$50,000 at any one time deposited into Borrower's Deposit Account number 6567391 located at Prosperity Bank, and (vi) an aggregate amount not to exceed \$2,000,000 at any one time deposited into in escrow in Borrower's Deposit Account number 15375220 located at Business Bank of St. Louis (such amount to reduce in accordance with the terms of such escrow), make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless Borrower or its Subsidiary, as applicable, and the applicable bank or securities

intermediary have entered into Control Agreements with Agent governing such Permitted Investments in order to perfect (and further establish) Agent's Liens in such Permitted Investments; provided that the Financing Order shall provide that deposit account control agreements in favor of the Existing Agent shall be deemed also in favor of the Agent. Except as provided in the preceding sentence, Borrower shall not and shall not permit its Subsidiaries to establish or maintain any Deposit Account or Securities Account (other than the TL Deposit Account (as defined in the Existing Term Debt Intercreditor Agreement) unless Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account.

(c) Fail to establish and maintain the primary depository and treasury management relationships of Loan Parties (other than the TL Deposit Account (as defined in the Existing Term Debt Intercreditor Agreement)) with Wells Fargo or one of its Affiliates.

6.12. **Transactions with Affiliates.**

Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Borrower or its Subsidiaries, on the one hand, and any Affiliate of Borrower or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, (ii) are no less favorable, taken as a whole, to Borrower or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate and (iii) if such transactions involve aggregate consideration in excess of \$200,000, the terms of such transactions have been approved by a majority of the Disinterested Directors of the Borrower or the applicable Subsidiary, or in the event there are no Disinterested Directors, a fairness opinion is provided by a nationally recognized appraisal or investment banking firm with respect to such transaction. For purposes of this clause (a), "Disinterested Directors" means one or more members of the board of directors of the Borrower or the applicable Subsidiary having no material direct or indirect financial interest in or with respect to such transaction (a member of any such board of directors shall not be deemed to have such a financial interest by reason of such member's holding Stock of the Borrower or any options, warrants or other rights in respect of such Stock),

(b) so long as it has been approved by Borrower's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity provided for the benefit of directors (or comparable managers) of Borrower or its applicable Subsidiary as in effect on the Filing Date,

(c) subject to the Budget, so long as it has been approved by Borrower's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of Borrower and its Subsidiaries in the ordinary course of business and consistent with industry practice,

(d) the Existing First Lien Term Debt Documents, the Existing Second Lien Term Debt Documents and Term Debt Documents, or any amendments or modifications thereto

and permitted under the Existing Term Debt Intercreditor Agreement, Financing Order and hereby, and any payments made pursuant thereto to the extent permitted hereunder and made in accordance with the Financing Order and the Budget,

(e) transactions between or among the Borrower and/or its Subsidiaries that are Loan Parties in the ordinary course of business,

(f) any contribution of capital to Borrower and

(g) the execution and delivery of (but not the payment of any amounts under) the Access Management Agreement.

6.13. **Use of Proceeds.**

Use the proceeds of any loan made hereunder for any purpose other than (a) on the Closing Date, to pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (b) to fund administrative expenses of Borrower that are in the Budget (including, without limitation, payments with respect to the Carveout when and to the extent provided therefor in the Financing Order), (c) to provide payments of "adequate protection" (as set forth in Section 361 of the Bankruptcy Code) when and to the extent provided therefor in the Financing Order and (d) consistent with the terms and conditions hereof, for their lawful and permitted purposes (including that no part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve), in each case as permitted by, and consistent in all respects with, the Budget and the Financing Order.

Without limiting the generality of the foregoing, Borrower agrees that it will not, and will not permit any of its Subsidiaries to use the proceeds of any loan made hereunder or any proceeds of Existing Collateral to be applied to (i) repay the Existing First Lien Term Debt, Existing Second Lien Term Debt or Term Debt or (ii) except as expressly permitted under the Financing Order, to affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent enforceability or priority of the Liens, claims or rights in favor of Agent, any Lender, Existing Agent or any Existing Lender.

6.14. **Limitation on Issuance of Stock.**

Except as permitted by the Support Agreement (other than paragraph 11 thereof), issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock.

6.15. **Consignments.**

Consign any of its or their Inventory or sell any of its or their Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

6.16. **Inventory with Bailees, Warehouseman or Processors.**

Store the Inventory of Borrower or its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party; provided, that Borrower may store Inventory at the locations and up to the value limits set forth on Schedule 6.16, provided that the Agent has received a Collateral Access Agreement (with respect to such Inventory located at a warehouse location) or letter agreement (with respect to such Inventory located at a processor location) executed by the applicable warehouseman or processor and the applicable Borrower or Subsidiary, in form and substance satisfactory to Agent, and such Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on such warehouseman's or processor's premises.

6.17. **Financing Order; Administrative Expense Priority; Payments.**

(a) Seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for modifications and amendments joined in or agreed to in writing in advance by Agent;

(b) Seek the use of "Cash Collateral" (as defined in the Financing Order) in a manner inconsistent with the terms of the Financing Order without the prior written consent of Agent;

(c) Suffer to exist at any time a priority for any administrative expense or unsecured claim against any Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code) or any superpriority claim which is equal or superior to the priority of the Lender Group in respect of the Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout and the superpriority claims of the Term Debt Lenders solely to the extent and priorities set forth in the Financing Order; and

(d) Prior to the date on which the Obligations have been indefeasibly paid in full in cash, all Letters of Credit have been cash collateralized or returned for cancellation pursuant to this Agreement, and this Agreement has been terminated, pay any administrative expenses, except administrative expenses provided for in the Budget subject to the Permitted Variances and the Carveout.

Notwithstanding the foregoing, Borrower shall be permitted to pay as the same may become due and payable (i) administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business and to the extent otherwise authorized under the Financing Order and this Agreement and (ii) compensation and reimbursement of expenses to professionals allowed and payable under Sections 330 and 331 of the Bankruptcy Code to the extent permitted by the Financing Order and in the Budget.

7. BUDGET COMPLIANCE.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, Borrower shall have actual cash receipts and disbursements equal to or more favorable than the applicable Permitted Variance.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1. If Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations, and such failure continues for a period of 3 Business Days, (b) all or any portion of the principal of the Obligations or (c) all or any portion of the Existing Secured Obligations as and when due and payable in accordance with the Financing Order;

8.2. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 5.3 (solely if a Loan Party is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if such Loan Party refuses to allow Agent or its representatives or agents to visit such Loan Party's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss such Loan Party's affairs, finances, and accounts with officers and employees of such Loan Party), 5.10, 5.13, 5.14, 5.15 or 5.16 of this Agreement, (ii) Sections 6.1 through 6.17 of this Agreement, (iii) Section 7 of this Agreement, (iv) Section 6 of the Security Agreement or (v) the Financing Order;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.1 or 5.2 of this Agreement and such failure continues for a period of 2 days;

(c) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 5.4, 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any Authorized Person or senior officer of a Loan Party or (ii) the date on which written notice thereof is given to a Loan Party by Agent; or

(d) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any Authorized Person or senior officer of a Loan Party or (ii) the date on which written notice thereof is given to a Loan Party by Agent;

8.3. If, after the Filing Date, one or more judgments, orders, or awards for the payment of money involving a postpetition claim in an aggregate amount of \$500,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. **[Reserved]**;

8.5. If a Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of Borrower and its Subsidiaries, taken as a whole;

8.6. If, first arising after the Filing Date, there is a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$500,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder; provided that this Section 8.6 shall not apply to any default under Indebtedness existing prior to the Filing Date and which has been accelerated by virtue of the filing of the Bankruptcy Case;

8.7. If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue 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) as of the date of issuance or making or deemed making thereof;

8.8. If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.9. If the Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Priority Liens, Permitted Liens which are permitted purchase money Liens, the interests of lessors under Capital Leases or the Liens securing the Existing Secured Obligations, first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, \$100,000, or (c) as the result of an action or failure to act on the part of Agent;

8.10. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be

declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.11. If a Change of Control occurs;

8.12. If Borrower or any Subsidiary makes any payment on account of any Indebtedness existing as of the Filing Date, except for any payments expressly authorized by the Financing Order and this Agreement;

8.13. If the Financing Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner without the prior written consent of Required Lenders;

8.14. If an order with respect to the Bankruptcy Case shall be entered by the Bankruptcy Court without the prior written consent of Agent appointing (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the business of the Loan Parties under Section 1106(b) of the Bankruptcy Code (which appointment shall not have been reversed, stayed or vacated within 7 calendar days);

8.15. If any Person other than Borrower shall assert any claim in the Bankruptcy Case arising under Sections 105, 506(c), 552 or any other section of the Bankruptcy Code against Agent, Existing Agent, any Lender, any Existing Lender, or the Collateral, and either (x) the same shall remain unopposed by the Borrower for more than 5 Business Days, or (y) in any event, any such claim shall not be dismissed or withdrawn, with prejudice, within 10 days after the assertion thereof;

8.16. Except as set forth in the Financing Order, (i) if any Person other than Borrower shall commence any action in the Bankruptcy Case adverse to any member of the Lender Group or any of their rights and remedies under the Loan Documents, the Financing Order or any other order of the Bankruptcy Court and (ii) either (x) the same shall remain unopposed by the Borrower for more than 5 Business Days, or (y) in any event, any such claim shall not be dismissed or withdrawn, with prejudice, within 10 days after the assertion thereof;

8.17. If (i) Borrower or any of its Affiliates shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of Agent, the Lenders, Existing Agent and the Existing Lenders, claims or rights against Borrower or any of its Subsidiaries or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) any Lien or security interest created by this Agreement or the Financing Order shall, for any reason, cease to be valid or (iii) any action is commenced by Borrower or any of its Subsidiaries which contests the validity, perfection or enforceability of any of the Liens and security interests of Agent and the Lenders created by this Agreement or the Financing Order;

8.18. If an order with respect to the Bankruptcy Case shall be entered by the Bankruptcy Court converting the Bankruptcy Case (or any case comprising part of the Bankruptcy Case) to a case under chapter 7 of the Bankruptcy Code;

8.19. If any of the Loan Parties files a plan of reorganization, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in the Bankruptcy Case, other than as permitted by the Support Agreement (other than paragraph 11 thereof) or that does not (i) contain a provision for termination of this Agreement and the Existing Loan Agreement and the Payment in full of the Obligations and the Existing Secured Obligations in a manner satisfactory to the Required Lenders on or before the effective date, or substantial consummation, of such plan and (ii) provide for the continuation of the Liens and security interests granted to Agent and priorities until such plan effective date;

8.20. If an order shall be entered by the Bankruptcy Court dismissing the Bankruptcy Case which does not contain a provision for termination of this Agreement and the Existing Loan Agreement and the Obligations and Existing Secured Obligations are not Paid in Full on or before such dismissal;

8.21. If an order with respect to the Bankruptcy Case shall be entered (including, without limitation, any financing order governing the Term Debt) without the express prior written consent of Required Lenders that has resulted in or could reasonably be expected to result in a Material Adverse Change; provided, however, that it shall not be an Event of Default if an order granting relief from the automatic stay is entered (i) solely for the purpose of allowing any creditor to determine the liquidated amount of its claim against any Loan Party or (ii) to permit the commencement of or prosecution of a proceeding to collect solely against an insurance company;

8.22. If an order shall be entered in any Bankruptcy Case that (a) other than the Financing Order, permits Borrower or any Subsidiary of Borrower to incur Indebtedness (other than the Term Debt to the extent set forth in the Financing Order) secured by any Lien under Bankruptcy Code Section 364(c)(1) or by a Lien *pari passu* with or superior to the Lien granted under the Loan Documents and the Existing Loan Documents and Bankruptcy Code Sections 364(c)(2) or (d) (other than the Liens securing the Term Debt to the extent set forth in the Financing Order), unless (i) all of the Obligations and Existing Secured Obligations have been Paid in Full at the time of the entry of any such order, or (ii) the Obligations and the Existing Secured Obligations are Paid in Full with such Indebtedness, or (b) permits Borrower or any Subsidiary of Borrower the right to use Collateral other than in accordance with the terms of the Financing Order, unless all of the Obligations and Existing Secured Obligations shall have been Paid in Full;

8.23. If the Borrower sells or otherwise disposes of any of its assets outside the ordinary course of its business pursuant to Section 363 of the Bankruptcy Code, unless (i) all of the Obligations and Existing Secured Obligations are Paid in Full with the proceeds of such sale, or (ii) such sale is consented to by the Required Lenders;

8.24. Subject to the Financing Order, if any motions to sell or otherwise dispose of any Collateral or approve procedures regarding the same, any plan or disclosure statement or

supplements or amendments thereto (other than any plan permitted by the Support Agreement, except paragraph 11 thereof), or any orders approving or amending any of the foregoing, are not in form and substance reasonably acceptable to the Required Lenders;

8.25. The expiration or termination of exclusivity by Borrower and its Subsidiaries without the prior consent of the Required Lenders;

8.26. If any guarantor of all or any portion of the Existing Secured Obligations or the Obligations asserts any right of subrogation or contribution against any Loan Party until the Existing Secured Obligations and Obligations are Paid in Full;

8.27. If Borrower or any Subsidiary of Borrower challenges the application of any payments or collections received by Agent or Lenders to the Obligations or Existing Secured Obligations as provided for herein;

8.28. If any holder of Indebtedness existing prior to the Closing Date (other than the Existing First Lien Term Debt, the Existing Second Lien Term Debt and the Existing Secured Obligations) is granted adequate protection with respect to such Indebtedness without the prior written consent of Agent;

8.29. If Borrower or any Subsidiary of Borrower uses or seeks to use "Cash Collateral" (as defined in the Financing Order) or Advances for any item other than those set forth, and in accordance with, the Budget and as approved by the Bankruptcy Court; or

8.30. If the Consultant is terminated or disqualified for any reason, and Borrower has not appointed a replacement Consultant reasonably acceptable to Required Lenders within 7 days thereafter.

9. **RIGHTS AND REMEDIES.**

9.1. **Rights and Remedies.**

Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) or (b) by written notice to Borrower), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) declare the Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower;

(b) cease advancing money or extending credit to or for the benefit of Borrower under this Agreement, under any of the Loan Documents, or under any agreement between Borrower and the Lender Group;

(c) subject to the applicable terms, if any, of the Financing Order, terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations; and

(d) subject to the applicable terms, if any, of the Financing Order, exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents or applicable law.

9.2. **Remedies Cumulative.**

The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. **WAIVERS; INDEMNIFICATION.**

10.1. **Demand; Protest; etc.**

Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which a Loan Party may in any way be liable.

10.2. **The Lender Group's Liability for Collateral.**

Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, except to the extent of any actual loss resulting from the bad faith, gross negligence or willful misconduct of the Agent or any of the Lender Group in possession of any such 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, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

10.3. **Indemnification.**

Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at

any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided that Borrower shall not be liable for costs and expenses (including attorneys fees) of any Lender (other than WFCF) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, upon entry of the Final Order, or any Existing Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrower's and its Subsidiaries' compliance with the terms of the Loan Documents, upon entry of the Final Order, or Existing Loan Documents, including any such costs and expenses incurred in connection with any action to lift the automatic stay of Section 362 of the Bankruptcy Code, or any other action or participation by Agent, any Lender, Existing Agent or any Existing Lender in the Bankruptcy Case, including any contested matters or adversary proceedings, to the extent related to any of the foregoing (provided, however, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders to the extent such disputes do not relate to any action or omission of a Loan Party, (ii) disputes solely between or among the Lenders and their respective Affiliates to the extent such disputes do not relate to any action or omission of a Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 16), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, upon entry of the Final Order, or any Existing Loan Document, or the use of the proceeds of the credit provided hereunder, upon entry of the Final Order, or under any Existing Loan Document (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of Borrower or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrower or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower: **BOOMERANG TUBE, LLC**
14567 North Outer Forty Drive, 5th Floor
Chesterfield, Missouri 63017
Attn: General Counsel or Chief Financial Officer
Fax No. (636) 534-5657
Email: mcullen@boomerangtube.com or
jason.roberts@boomerangtube.com

with copies to: **DEBEVOISE & PLIMPTON LLP**
919 Third Avenue
New York, New York 10022
Attn: My Chi To
Fax No. (212) 521-7015
Email: mcto@debevoise.com

ACCESS INDUSTRIES
730 Fifth Avenue, 20th Floor
New York, New York 10019
Attn: Alejandro Moreno
Fax No. (212) 977-8112
Email: amoreno@accind.com

If to Agent: **WELLS FARGO CAPITAL FINANCE, LLC**
150 South Wacker Drive, Suite 2200
Chicago, Illinois 60606
Attn: Portfolio Manager--Boomerang
Fax No. (312) 332-0424
Email: tony.vizgirda@wellsfargo.com

with copies to: **GOLDBERG KOHN LTD.**
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
Attn: Jeremy Downs
Fax No. (312) 332-2196
Email: jeremy.downs@goldbergekohn.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) IF THE BANKRUPTCY COURT ABSTAINS FROM HEARING OR REFUSES TO EXERCISE JURISDICTION OVER ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THE PARTIES AGREE THAT SUCH ACTIONS OR PROCEEDINGS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN,

INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH 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.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1. Assignments and Participations.

(a) With the prior written consent of Agent, which consent of Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees (each, an "Assignee"; provided, however, that no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee) all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000); provided, however, that Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (iii) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of \$3,500.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination

of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of a Loan Party or the performance or observance by a Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with

respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, and (v) all amounts payable by Borrower hereunder and under the other Loan Documents shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. Except as otherwise set forth in Section 16, the rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Borrower and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent (as a non-fiduciary agent on behalf of Borrower) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Obligations and Commitments (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Obligations and Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of

all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrower shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Obligations and Commitments to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrower, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrower, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Borrower from time to time as Borrower may reasonably request.

13.2. Successors.

This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS.**

14.1. Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Control Agreements or Bank Product

Agreements), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c)(i),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) other than as permitted by Section 15.11, release Agent's Lien in and to any of the Collateral,

(vi) amend, modify, or eliminate the definition of "Required Lenders" or "Pro Rata Share",

(vii) contractually subordinate any of Agent's Liens,

(viii) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(ix) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii) or Section 2.4(e) or (f),

(x) amend, modify, or eliminate any of the provisions of Section 13.1(a) to permit a Loan Party to be permitted to become an Assignee, or

(xi) amend, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrower based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount.

(b) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrower, and the Required Lenders,

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrower, and the Required Lenders,

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrower, and the Required Lenders,

(e) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrower, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender.

14.2. **Replacement of Certain Lenders.**

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Holdout Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Holdout Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of the Letters of Credit). If the

Holdout Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Holdout Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Holdout Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Holdout Lender or Tax Lender, as applicable, shall remain obligated to make the Holdout Lender's or Tax Lender's, as applicable, Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of such Letters of Credit.

14.3. No Waivers; Cumulative Remedies.

No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1. Appointment and Authorization of Agent.

Each Lender hereby designates and appoints WFCF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other

implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Advances, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower or its Subsidiaries, the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2. **Delegation of Duties.**

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent.**

None of the Agent-Related Persons shall (a) be liable to the Lenders for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Borrower or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness,

enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Borrower or its Subsidiaries.

15.4. **Reliance by Agent.**

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default.**

Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. Credit Decision.

Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. Costs and Expenses; Indemnification.

Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the

Collections of Borrower and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by Borrower or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so) from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity.**

WFCF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

15.9. **Successor Agent.**

Agent may resign as Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled to appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time

that Agent's resignation is effective, it is acting as the Issuing Lender or the Swing Lender, such resignation shall also operate to effectuate its resignation as the Issuing Lender or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. Lender in Individual Capacity.

Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. Collateral Matters.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies

to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Borrower or its Subsidiaries owned no interest at the time Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to Borrower or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) or to sell or otherwise dispose of (or to consent to any such sale or other disposition of) all or any portion of the Collateral at any sale thereof conducted by Agent under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by Borrower or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion

given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

15.12. Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or its Subsidiaries or any deposit accounts of Borrower or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. Agency for Perfection.

Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders.**

All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents.**

Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16. **Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.**

By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Borrower or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of Loan Parties' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrower, or the

indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower or its Subsidiaries to Agent that has not been contemporaneously provided by Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. Several Obligations; No Liability.

Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, unless otherwise required by law, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or

withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts (i) if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction), (ii) in respect of United States federal withholding Taxes imposed by FATCA, (iii) in respect of United States federal withholding Taxes imposed on payments to or for the account of a Lender pursuant to the applicable law in effect on the date on which such Lender becomes a Lender pursuant to this Agreement or (iv) in respect of Taxes measured by or imposed upon net income, or franchise Taxes or branch profits Taxes, of a Lender or its applicable lending office by the jurisdiction (or by any political subdivision or taxing authority thereof) under the laws of which such Lender is organized, or in which such Lender has its principal office or maintains its applicable lending office, or with which such Lender has a present or former connection (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under, this Agreement or any other Loan Document) (Taxes described in clauses (i) through (iv) are "Excluded Taxes"). . Borrower will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrower.

(b) Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document ("Other Taxes"). The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including, without limitation, any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

(c) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, W-8 BEN-E, or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or W-8 BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, however, that nothing in this Section 16(d) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(e) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender or Participant, such Lender or Participant agrees to notify Agent (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16(c) or 16(d) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16(c) or 16(d), if applicable. Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(f) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 16(c) or 16(d) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(g) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(h) If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrower (but only to the extent of payments made, or additional amounts paid, by Borrower

under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such a refund); provided, that Borrower, upon the request of Agent or such Lender, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Borrower or any other Person.

17. GENERAL PROVISIONS.

17.1. Effectiveness.

This Agreement shall be binding and deemed effective when executed by Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof. This Agreement shall be deemed to be delivered in the State of Illinois.

17.2. Section Headings.

Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3. Interpretation.

Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. Severability of Provisions.

Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. Bank Product Providers.

Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively

of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrower may obtain Bank Products from any Bank Product Provider, although Borrower is not required to do so. Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. Debtor-Creditor Relationship.

The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. Counterparts; Electronic Execution.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed

counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8. Revival and Reinstatement of Obligations.

If the incurrence or payment of the Obligations by Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Lender Group related thereto, the liability of Borrower or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.9. Confidentiality.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation, provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide

such prior written notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may (i) provide customary information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services, and (ii) use the name, logos, and other insignia of Borrower and the Loan Parties and the Total Commitments provided hereunder in any "tombstone" or comparable advertising, on its website or in other marketing materials of Agent.

17.10. **Lender Group Expenses.**

Borrower agrees to pay any and all Lender Group Expenses on the earlier of (a) the first day of the month or (b) the date on which demand therefor is made by Agent and agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.

17.11. **Survival.**

All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, the Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

17.12. **Patriot Act.**

Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act.

17.13. **Integration.**

This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BOOMERANG TUBE, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

WELLS FARGO CAPITAL FINANCE, LLC,
a Delaware limited liability company, as Agent and as a
Lender

By: _____
Title: _____

BANK OF AMERICA, N.A.,
as a Lender

By: _____
Title: _____

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

"Access" means Access Industries, Inc.

"Access Management Agreement" means the Second Amended and Restated Management Consulting Agreement, dated as of June 8, 2015, by and between the Borrower and Access Tubulars, LLC, a Delaware limited liability company, as in effect on the Closing Date.

"Account" means an account (as that term is defined in the Code), whether arising prior to, on, or after the Filing Date.

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Additional Documents" has the meaning specified therefor in Section 5.12 of the Agreement.

"Advances" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 6.12 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to the Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1.

"Agent's Liens" means the Liens granted by Borrower or its Subsidiaries to Agent under the Loan Documents.

"Agreement" means the Debtor-in-Possession Credit Agreement to which this Schedule 1.1 is attached.

"APD" Appalachian Pipe Distributors, LLC, a North Carolina limited liability company.

"APD Distributorship Agreement" means that certain Distributorship Agreement dated as of June 17, 2013 between Borrower and APD.

"Applicable Unused Revolver Fee" means a rate equal to 0.50% per annum; provided, that, if as of any date of determination, the average Daily Balance of the Revolver Usage during the immediately preceding month is more than 50% of the Maximum Revolver Amount, the Applicable Unused Revolver Fee means 0.375% per annum.

"Application Event" means the occurrence and continuance of (a) a failure by Borrower to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) of the Agreement.

"Assignee" has the meaning specified therefor in Section 13.1(a) of the Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

"Authorized Person" means any one of the individuals identified on Schedule A-2, as such schedule is updated from time to time by written notice from Borrower to Agent.

"Availability" means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 of the Agreement (after giving effect to all then outstanding Advances and Letters of Credit (other than Bank Product Obligations)).

"Avoidance Actions" means any and all claims and causes of action of any Borrower's estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with any proceeds therefrom.

"Avoidance Payments" has the meaning set forth in Section 2.4(d)(iv).

"Bank Product" means any one or more of the following financial products or accommodations extended to Borrower or its Subsidiaries by a Bank Product Provider: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase

cards (including so-called "procurement cards" or "P-cards"), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by Borrower or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Borrower or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Borrower or its Subsidiaries; provided, however, in order for any item described in clauses (a) (b), or (c) above, as applicable, to constitute "Bank Product Obligations", (i) if the applicable Bank Product Provider is Wells Fargo or its Affiliates, then, if requested by Agent, Agent shall have received a Bank Product Provider Letter Agreement within 10 days after the date of such request, or (ii) if the applicable Bank Product Provider is any other Person, the applicable Bank Product must have been provided and Agent shall have received a Bank Product Provider Letter Agreement within 10 days after the date of the provision of the applicable Bank Product to Borrower or its Subsidiaries.

"Bank Product Provider" means any Lender or any of its Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Bank Product within 10 days after the provision of such Bank Product to Borrower or its Subsidiaries; provided, further, however, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bank Product Provider Letter Agreement" means a letter agreement in substantially the form attached hereto as Exhibit B-2, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, Borrower, and Agent.

"Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of reserves that Agent has reasonably determined it is necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of their credit

exposure to Borrower and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"Bankruptcy Case" means the case of Borrower and Guarantors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number [] and any superseding chapter 7 case or cases.

"Bankruptcy Code" means the United States Code (11 U.S.C. §§ 101, *et seq.*), as amended, and any successor statute, as in effect from time to time.

"Bankruptcy Court" has the meaning set forth in the recitals to the Agreement.

"Base Rate" means the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 3 months and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

"Base Rate Loan" means each portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means, as of any date of determination (with respect to any portion of the outstanding Advances on such date that is a Base Rate Loan), 2.50 percentage points.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which Borrower or any of its Subsidiaries or ERISA Affiliates has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"Board of Directors" means the board of directors (or comparable managers) of Borrower or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Borrowing" means a borrowing consisting of Advances made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan.

"Borrowing Base" means, as of any date of determination, the result of:

- (a) the product of (A) 85%, less the Dilution Percentage in excess of 5%, times (B) the amount of Eligible Accounts, *plus*
- (b) *the lower of*
 - (i) the sum of (A) 70% of the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible Inventory (other than Eligible In-Transit Inventory) *plus* (B) 60% of the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible In-Transit Inventory, and
 - (ii) 85% *times* the most recently determined Net Liquidation Percentage *times* the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible Inventory, *minus*
- (c) the aggregate amount of reserves, if any, established by Agent under Section 2.1(c) of the Agreement (including any Rent Reserve), *plus*
- (d) the amount of the Permitted Overadvance.

Notwithstanding the foregoing, the borrowing availability attributable to Eligible Inventory consisting of (i) Eligible Purchased Inventory shall not exceed \$4,000,000 in the aggregate at any time and (ii) Eligible Processor/Warehouse Inventory shall not exceed \$5,000,000 in the aggregate at any time.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Borrowing Base Excess" has the meaning set forth in Section 2.4(e)(i).

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of Illinois, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Budget" a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning as of the week of the Filing Date, broken down by week, including the anticipated weekly uses of Advances for such period, which shall include, among other things, available cash, cash flow, trade payables and ordinary course expenses, total expenses and capital expenditures, fees and expenses related to the Bankruptcy Case (including Borrower's loan facilities), and working capital and other general corporate needs, a copy of the initial one of which is attached as Exhibit B-3, as amended, supplemented or modified from time to time with Agent's written consent.

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

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; provided, that, notwithstanding anything to the contrary contained herein, for purposes of this Agreement, in the case of any Accounting Change that becomes effective after the date of this Agreement that would require any leases that would have been treated as operating leases in accordance with GAAP in effect immediately before the date of this Agreement to be classified and accounted as capital leases, such change or effect thereof shall be disregarded and eliminated for purposes of the operation of the terms and covenants (and the related calculations thereunder) in this Agreement unless Borrower and Agent shall otherwise mutually agree in writing.

"Carveout" has the meaning set forth in the Financing Order.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Change of Control" means that (a) Permitted Holders fail to own and control, directly or indirectly, 70%, or more, of the Stock of Borrower having the right to vote for the election of members of the Board of Directors, (b) 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 20%, or more, of the Stock of Borrower having the right to vote for the election of members of the Board of Directors, (c) Borrower fails to own and control, directly or indirectly, 100% of the Stock of each other Loan Party, (d) a "Change of Control" as defined in the Existing First Lien Term Debt Loan Agreement and Existing Second Lien Term Debt Loan Agreement has occurred, or (e) a "change of control" as defined in any "Term Loan Credit Agreement" (as defined in the Existing Term Debt Intercreditor Agreement) has occurred.

"Closing Date" means June 10, 2015.

"Code" means the Illinois Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and property, and interests in assets and property, and proceeds thereof now owned or hereafter acquired by Borrower or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents in accordance with the Financing Orders. Without limitation of the foregoing, upon entry of the Final Order, the Collateral shall include any and all Avoidance Actions and proceeds thereof.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Borrower's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds).

"Commitment" means, with respect to each Lender, its Revolver Commitment or its Total Commitment, as the context requires, and, with respect to all Lenders, their Revolver Commitments or their Total Commitments, as the context requires, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Compliance Certificate" means a certificate signed and delivered by the chief financial officer or other financial officer of Borrower to Agent stating that, to the best of such officer's knowledge, each of the Borrower and its Subsidiaries during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement or the other Loan Documents to which it is a party to be observed, performed

or satisfied by it, and that such officer has obtained no knowledge of any Default or Event of Default, except, in each case, as specified in such certificate.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of the Agreement.

"Consolidated Total Assets" means as of any date of determination, the total assets in each case of the Loan Parties at the end of the most recently ended fiscal quarter of the Borrower for which Agent has received financial statements required to be delivered pursuant to Schedule 5.1, determined on a consolidated basis in accordance with GAAP (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment, on a pro forma basis including any property or assets being acquired in connection therewith).

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

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

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under the Agreement on the date that it is required to do so under the Agreement (including the failure to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within 1 Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

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

"Designated Account" means the Deposit Account of Borrower identified on Schedule D-1.

"Designated Account Bank" has the meaning specified therefor in Schedule D-1.

"Dilution Percentage" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 90 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Loan Parties' Accounts during such period, by (b) Loan Parties' billings with respect to Accounts during such period.

"Dollars" or "\$" means United States dollars.

"Effective Date" means the "Effective Date" as defined in the Prearranged Plan (as defined in the Support Agreement).

"Eligible Accounts" means those Accounts created by a Loan Party in the ordinary course of its business, that arise out of such Loan Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 120 days of original invoice date or 60 days of due date, or Accounts with selling terms of more than 30 days (or 90 days in the case of Encana, provided that if such Accounts have selling terms of more than 60 days, such Accounts are not unpaid more than 30 days past due date),

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Loan Party or an employee or agent of a Loan Party or any Affiliate of a Loan Party,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or Canada or any state or province, as applicable, thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrower has complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States,

(h) Accounts with respect to which the Account Debtor is a creditor of a Loan Party, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute,

(i) Accounts with respect to an Account Debtor (other than Bourland & Leverich Supply Co., Premier Pipe, LLC, Colorado Tubulars - Aztec Pipe, NOV – Wilson and Master Tubulars Inc.) whose total obligations owing to Loan Parties exceed 10% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, or Accounts with respect to (i) Bourland & Leverich Supply Co. if the total obligations owing to Loan Parties by Bourland & Leverich Supply Co. exceed 35% (such percentage, as applied to Bourland & Leverich Supply Co., being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (ii) Premier Pipe, LLC if the total obligations owing to Loan Parties by Premier Pipe, LLC exceed 35% (such percentage, as applied to Premier Pipe, LLC, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (iii) Colorado Tubulars - Aztec Pipe if the total obligations owing to Loan Parties by Colorado Tubulars - Aztec Pipe exceed 30% (such percentage, as applied to Colorado Tubulars - Aztec Pipe, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (iv) NOV – Wilson if the total obligations owing to Loan Parties by NOV – Wilson exceed 25% (such percentage, as applied to NOV – Wilson, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, or (v) Master Tubulars Inc. if the total obligations owing to Loan Parties by Master Tubulars Inc. exceed 15% (such percentage, as applied to Master Tubulars Inc., being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, in each case to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Loan Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(m) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(n) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity, or

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Loan Party of the subject contract for goods or services.

"Eligible Consigned Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) and (B) such Inventory has been consigned to APD pursuant to the APD Distributorship Agreement and (b) satisfies the following additional criteria: (i) Agent has received a letter agreement with respect to such Inventory executed by such Loan Party and such consignee, in form and substance satisfactory to Agent, (ii) such Loan Party has filed a UCC-1 financing statement against such consignee with respect to such Inventory and such Loan Party has assigned such UCC-1 financing statement to Agent and such Loan Party and consignee have delivered such other documents as reasonably requested by Agent, in form and substance satisfactory to Agent, to evidence that Agent has a valid and perfected first priority Lien on such Inventory, (iii) such Inventory is segregated or otherwise separately identifiable from the goods of the consignee and others, if any, stored on the premises of such consignee, (iv) the value (calculated on the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of such Inventory does not exceed \$5,000,000 in the aggregate, and (v) such Inventory is located at one of the follow locations: (i) 70 Maryland Ave. Jersey Shore, PA 17740; (ii) 5257 State Highway 250, Strasburg, OH 44680 or (iii) 1300 Heavy Haul Road, Morgantown, WV 26508.

"Eligible In-Transit Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) currently is in transit from a location in the United States to a location set forth on Schedule E-1 and (B) is the subject of a bill of lading or other document of title and (b) satisfies the following additional criteria: (i) a Loan Party has title to such Inventory, (ii) such Inventory is not in transit for more than 45 days, (iii) no default exists under any agreement in effect between the vendor of such Inventory and a Loan Party that would permit such vendor under any applicable law (including the UCC) to divert, reclaim,

reroute or stop shipment of such Inventory, and (iv) such Inventory is insured against types of loss, damage, hazards and risks, and in amounts, satisfactory to Agent in its Permitted Discretion.

"Eligible Inventory" means Inventory consisting of first quality finished goods held for sale in the ordinary course of a Loan Party's business, raw materials and work-in-process (provided, that, work-in-process shall only be deemed to be Eligible Inventory hereunder after receipt by Agent of an appraisal with respect to such work-in-process, in form and substance satisfactory to Agent, prepared by AccuVal Associates, Incorporated (so long as AccuVal Associates, Incorporated is then an approved appraiser of Agent) or another appraiser satisfactory to Agent, and only so long as Agent agrees, in its Permitted Discretion, to permit such work-in-process to constitute Eligible Inventory hereunder), in each case that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrower's historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

- (a) a Loan Party does not have good, valid, and marketable title thereto,
- (b) [reserved],
- (c) it is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) (other than Eligible Purchased Inventory, Eligible Consigned Inventory or Eligible Processor/Warehouse Inventory),
- (d) it is in-transit to or from a location of a Loan Party (other than (A) in transit from one location set forth on Schedule E-1 to another location set forth on Schedule E-1, (B) Eligible In Transit Inventory or (C) Eligible Purchased Inventory),
- (e) it is located on real property leased by a Loan Party or in a contract warehouse, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, or Agent has established a Rent Reserve under Section 2.1(c) for such location, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,
- (f) it is the subject of a bill of lading or other document of title, unless it is Eligible In-Transit Inventory,
- (g) it is not subject to a valid and perfected first priority Agent's Lien,
- (h) it consists of goods returned or rejected by a Loan Party's customers,

(i) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process (unless Agent has agreed, in its Permitted Discretion, to permit such work-in-process to constitute Eligible Inventory hereunder as provided in the first paragraph hereof), or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in a Loan Party's business, bill and hold goods not subject to documentation satisfactory to Agent, in excess of \$5,000,000 in the aggregate or which have been held for more than 30 days after billing, defective goods, "seconds," or Inventory acquired on consignment,

(j) it is subject to third party trademark, licensing or other proprietary rights, unless Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite such third party rights, or

(k) it is Inventory consigned by a Loan Party unless it is Eligible Consigned Inventory.

"Eligible Processor/Warehouse Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) and (B) such Inventory is located (i) at the location of a processor who is processing and storing the Inventory for such Loan Party or (ii) at a warehouse facility which is storing the Inventory for such Loan Party and (b) satisfies the following additional criteria: (i) Agent has received a Collateral Access Agreement (with respect to such Inventory located at a warehouse location) or letter agreement (with respect to such Inventory located at a processor location) executed by such Loan Party and such processor or warehouseman, as applicable, in form and substance satisfactory to Agent, (ii) with respect to Inventory located at a processor location, such Loan Party has filed a UCC-1 financing statement against such processor with respect to such Inventory and such Loan Party has assigned such UCC-1 financing statement to Agent and such Loan Party and such processor have delivered such other documents as reasonably requested by Agent, in form and substance satisfactory to Agent, to evidence that Agent has a valid and perfected first priority Lien on such Inventory, (iii) such Inventory is segregated or otherwise separately identifiable from the goods of such processor or warehouseman and others, if any, stored on the premises of such processor or warehouseman, and (iv) such Inventory is located at one of the follow locations: (1) Xxtreme Pipe Services, 7814 Miller Road 3, Houston, TX 77049, (2) Lincoln Manufacturing, 5301 Polk St., Houston, TX 77023, (3) Lonestar Hydro & Maintenance, 16026 Miller Road #1, 1407 Miller Road #2 and 7415 Miller Road #2, Houston, TX 77049, (4) K&B Houston, 8500 Miller Rd. #2, Houston, TX 77049 and (5) Turner Bros. Trucking, 15730 Beaumont Hwy., Houston, TX 77049.

"Eligible Purchased Inventory" means Inventory that (a) qualifies as Eligible Inventory except that such Inventory (A) currently is in transit from a location of a Loan Party in the United States to the location of a customer of such Loan Party in the United States and (B) such Inventory has been sold to such customer by such Loan Party effective upon delivery at the shipment destination, such Loan Party has title to such Inventory until such delivery, and such Loan Party has not yet issued an invoice to such customer with respect to the sale of such Inventory and (b) satisfies the following additional criteria: (i) once invoiced by the applicable Loan Party, the Account arising with respect to the sale of such Inventory will qualify as an Eligible Account, (ii) such Inventory is not in transit for more than 14 days.

"Employee Benefit Plans" means any employee benefit plan within the meaning of Section 3(3) of ERISA which provides any benefits to any employees of a Loan Party or to which any Loan Party has an obligation to make contributions, including by reason of being an ERISA Affiliate.

"Encana" means Encana Oil & Gas (USA) Inc.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of a Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Subsidiary of a Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Borrower or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

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

"Equipment" means equipment (as that term is defined in the Code).

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

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Borrower or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA

that is a party to an arrangement with Borrower or any of its Subsidiaries and whose employees are aggregated with the employees of Borrower or its Subsidiaries under IRC Section 414(o).

"Event of Default" has the meaning specified therefor in Section 8 of the Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Taxes" has the meaning provided in Section 16(a).

"Existing Agent" means Wells Fargo Capital Finance, LLC in its capacity as the administrative agent to the Existing Lenders.

"Existing Collateral" means the Loan Parties' assets of the categories described in the definition of "Working Capital Collateral" in the Existing Term Debt Intercreditor Agreement that secure the Existing Secured Obligations.

"Existing First Lien Term Debt" means the Indebtedness under the Existing First Lien Term Debt Documents.

"Existing First Lien Term Debt Agent" Cortland Capital Market Services LLC, in its capacity as administrative agent under the Existing First Lien Term Debt Documents.

"Existing First Lien Term Debt Credit Agreement" means that certain Credit Agreement dated as of April 6, 2015 among Borrower, Existing First Lien Term Debt Agent and the Existing First Lien Term Debt Lenders, as amended, restated, replaced or otherwise modified from time to time as permitted herein.

"Existing First Lien Term Debt Documents" means the Existing First Lien Term Debt Credit Agreement and each other document securing or evidencing the Existing First Lien Term Debt as in effect on the date hereof.

"Existing First Lien Term Debt Lenders" means the lenders party to the Existing First Lien Term Debt Credit Agreement.

"Existing Lenders" means the financial institutions party to the Existing Loan Agreement, and each of their respective successors and assigns.

"Existing Loan Agreement" means that certain Amended and Restated Credit Agreement dated as of October 11, 2012, by and among Borrower and Existing Agent, as amended from time to time.

"Existing Loan Documents" all documents, agreements and orders that evidence or govern the Existing Secured Obligations, including, without limitation, the items described on Schedule __, in each case, as the same has been amended, restated, supplemented or otherwise modified from time to time.

"Existing Second Lien Term Debt" means the Indebtedness under the Existing Second Lien Term Debt Documents.

"Existing Second Lien Term Debt Agent" Cortland Capital Market Services LLC, in its capacity as administrative agent under the Existing Second Lien Term Debt Documents.

"Existing Second Lien Term Debt Credit Agreement" means that certain Credit Agreement dated as of October 11, 2012 among Borrower, Existing Second Lien Term Debt Agent, and the Existing Second Lien Term Debt Lenders, as amended, restated, replaced or otherwise modified from time to time as permitted herein.

"Existing Second Lien Term Debt Documents" means the Existing Second Lien Term Debt Credit Agreement and each other document securing or evidencing the Existing Second Lien Term Debt as in effect on the date hereof.

"Existing Second Lien Term Debt Lenders" means the lenders party to the Existing Second Lien Term Debt Credit Agreement.

"Existing Secured Obligations" means all outstanding principal, accrued interest, accrued fees and expenses and any other indebtedness and amounts owing to Existing Lenders and Existing Agent, including all "Obligations" under and as defined in the Existing Loan Documents.

"Existing Term Debt Intercreditor Agreement" means that certain Amended and Restated Intercreditor Agreement dated as of April 6, 2015 among Existing First Lien Term Debt Agent, the Loan Parties and Agent, as amended, restated, replaced or otherwise modified from time to time as permitted therein.

"Extraordinary Receipts" means any payments received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.4(e)(ii) of the Agreement) consisting of (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, or (ii) received by Borrower or any of its Subsidiaries as reimbursement for any payment previously made to such Person), and (c) any purchase price adjustment (other than a working capital adjustment) received in connection with any purchase agreement.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor provisions that are substantively comparable), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b) of the IRC, any intergovernmental agreement entered into in connection with any of the foregoing and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds

brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

"Filing Date" has the meaning set forth in the recitals hereto.

"Final Order" has the meaning ascribed thereto in the Interim Order.

"Financing Order" means, (i) until the entry of the Final Order, the Interim Order, and (ii) after the entry of the Final Order, the Final Order, together with all amendments, modifications and supplements to such Interim Order or Final Order, as applicable, which are acceptable to Agent and each Lender in their sole and absolute discretion.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary": any Subsidiary of the Borrower which is organized and existing under the laws of any jurisdiction outside of the United States of America or that is a Foreign Subsidiary Holdco. Any subsidiary of the Borrower which is organized and existing under the laws of Puerto Rico or any other territory of the United States of America shall be a Foreign Subsidiary.

"Foreign Subsidiary Holdco": any Subsidiary of the Borrower, so long as such Subsidiary has no material assets other than securities or Indebtedness of one or more Foreign Subsidiaries (or Subsidiaries thereof), and intellectual property relating to such Foreign Subsidiaries (or Subsidiaries thereof) and other assets (including cash and Cash Equivalents) relating to an ownership interest in any such securities, Indebtedness, intellectual property or Subsidiaries; provided, that no Subsidiary of the Borrower shall be a "Foreign Subsidiary Holdco" if such Subsidiary is not a "Foreign Subsidiary Holdco" (or comparable term) for purposes of either the Existing Second Lien Term Debt or the Term Debt.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, however, that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guarantors" means (a) each Person that is a Subsidiary of Borrower on the Closing Date and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of the Agreement, and "Guarantor" means any one of them.

"Guaranty" means that certain general continuing guaranty, dated as of the Closing Date, executed and delivered by each extant Guarantor in favor of Agent, for the benefit of the Lender Group and the Bank Product Providers, in form and substance reasonably satisfactory to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

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

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Borrower or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Lender or any of its Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Hedge Provider unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Hedge Agreement within 10 days after the execution and delivery of such Hedge Agreement with Borrower or its Subsidiaries; provided, further, however, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations

"Holdout Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Incremental Loan Amount" means, as of any date of determination, an amount of the outstanding Obligations, if any, equal to the aggregate amount of outstanding Obligations (without giving effect to any draws under Letters of Credit (as defined in the Existing Loan Documents) that are deemed reissued hereunder) plus outstanding Existing Secured Obligations accrued but not yet payable as of such date) that is in excess of the outstanding amount of the Existing Secured Obligations as of the Filing Date.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of the Agreement.

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

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief (including the Bankruptcy Case).

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrower for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 1, 2 or 3 months thereafter; provided, however, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end

on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (d) Borrower may not elect an Interest Period which will end after the Maturity Date.

"Interim Order" means that certain [_____] entered as Docket No. [___] in the Bankruptcy Case.

"Inventory" means inventory (as that term is defined in the Code), whether an interest in which is acquired prior to, on, or after the Filing Date.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"Issuing Lender" means WFCF or any other Lender that, at the request of Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 2.11 of the Agreement and the Issuing Lender shall be a Lender.

"Lender" has the meaning set forth in the preamble to the Agreement, shall include the Issuing Lender and the Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including the Issuing Lender and the Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) to the extent not otherwise covered by clauses (c), (d), (e), (f), (g), (h) or (i) below, out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Borrower or its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement), real estate

surveys, real estate title policies and endorsements, and environmental audits, (c) out-of-pocket costs and expenses incurred by Agent in the disbursement of funds to Borrower or other members of the Lender Group (by wire transfer or otherwise), (d) out-of-pocket charges paid or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket audit fees and expenses (including travel, meals, and lodging) of Agent related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement, (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with Borrower or any of its Subsidiaries, (h) Agent's reasonable costs and expenses (including reasonable attorneys fees) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating, or amending the Loan Documents, and (i) Agent's and each Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, administering, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with the Bankruptcy Case or with such other "workout," a "restructuring," or an Insolvency Proceeding concerning Borrower or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents or Existing Loan Documents), or defending the Loan Documents or Existing Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral, including any such costs and expenses incurred in connection with any action to lift the automatic stay of Section 362 of the Bankruptcy Code, or any other action or participation by any member of the Lender Group in the Bankruptcy Case, including any contested matters or adversary proceedings, to the extent related to any of the foregoing; provided that, in each case in clauses (a)-(i), attorneys' fees, costs, disbursements and expenses shall be limited to all reasonable and documented (in summary form) of one firm of outside counsel to the Lender Group and one firm of local counsel to the Lender Group in each applicable jurisdiction.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit issued by Issuing Lender or a letter of credit issued by Underlying Issuer, as the context requires.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of those Lenders with a Revolver Commitment in an amount equal to 105% of the then existing Letter of Credit Usage, (b) causing the Letters of Credit to be returned to the Issuing Lender, or

(c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank reasonably acceptable to Agent in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Lender or Underlying Issuer pursuant to a Letter of Credit.

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

"LIBOR Notice" means a written notice in the form of Exhibit L-1.

"LIBOR Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"LIBOR Rate" means the rate per annum rate appearing on Bloomberg L.P.'s (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) 2 Business Days prior to the commencement of the requested Interest Period, for a term and in an amount comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrower in accordance with the Agreement, which determination shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means each portion of an Advance that bears interest at a rate determined by reference to the LIBOR Rate.

"LIBOR Rate Margin" means, as of any date of determination (with respect to any portion of the outstanding Advances on such date that is a LIBOR Rate Loan), 4.50 percentage points.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing, including all "liens" as defined by Section 101(37) of the Bankruptcy Code.

"LLC Agreement" means that certain Third Amended and Restated Limited Liability Company Agreement for Boomerang Tube, LLC, dated as of October 11, 2012, as in effect on the Closing Date.

"Loan Account" has the meaning specified therefor in Section 2.9 of the Agreement.

"Loan Documents" means the Agreement, the Financing Order, any Borrowing Base Certificate, the Guaranty, the Letters of Credit, the Mortgages, the Security Agreement, any note or notes executed by Borrower in connection with the Agreement and payable to any member of the Lender Group, any letter of credit application entered into by Borrower in connection with the Agreement, and any other agreement entered into, now or in the future, by Borrower or any of its Subsidiaries and any member of the Lender Group in connection with the Agreement (other than Bank Product Agreements and Hedge Agreements).

"Loan Party" means Borrower or any Guarantor.

"Margin Stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Change" means, other than, in each case, the commencement and continuation of the Chapter 11 Cases and/or the consummation of the transactions contemplated by the Loan Parties' "first day" pleadings reviewed by the Agent and the Required Lenders, (a) a material adverse change in the business, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries, taken as a whole, (b) a material impairment of Borrower's and its Subsidiaries ability to perform their obligations under the Loan Documents and Existing Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations, Existing Secured Obligations, Loan Documents or Existing Loan Documents or realize upon the Collateral or Existing Collateral, (c) a material impairment of the enforceability or priority of Agent's Liens with respect to the Collateral or Existing Agent's Liens with respect to the Existing Collateral or (d) a material adverse change in the legality, validity or enforceability of any Loan Document, Existing Loan Document or the Financing Order.

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$2,500,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days notice without penalty or premium), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

"Maturity Date" means the earliest of (i) the date that is one hundred and fifty (150) days following the Filing Date, (ii) the consummation of any sale of all or substantially all of the Collateral pursuant to Section 363 of the Bankruptcy Code without the consent of the Agent, (iii) if the Final Order has not been entered, the date that is forty five (45) days following the Filing Date, (iv) the occurrence of an Event of Default and (v) the Effective Date.

"Maximum Revolver Amount" means \$85,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c).

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Borrower or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property of Borrower or its Subsidiaries.

"Net Cash Proceeds" means with respect to any sale or disposition by Borrower or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of Borrower or its Subsidiaries, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto that are in the Budget and are required to be paid by Borrower or such Subsidiary in connection with such sale or disposition, plus any fees commissions and expenses that are not in the Budget but has been consented to by Agent in writing, and (iii) taxes paid or payable to any taxing authorities by Borrower or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Liquidation Percentage" means the percentage of the book value of Borrower's Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be as determined from time to time by an appraisal company selected by Agent. At Agent's option, Net Liquidation Percentage may be calculated separately for different categories of Inventory.

"Obligations" means (a) all loans (including the Advances (inclusive of Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of the Bankruptcy Case or any other Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in the Bankruptcy Case or any other Insolvency Proceeding), reimbursement or indemnification obligations with respect to Reimbursement Undertakings or with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees, Lender Group Expenses (including any fees or expenses that accrue after the commencement of the Bankruptcy Case or any other Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in the Bankruptcy Case or any other Insolvency Proceeding), guaranties owing by any Loan Party pursuant to or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations,

irrespective of whether contingent) owing by Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Underlying Letters of Credit, and (c) all Bank Product Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

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

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Other Taxes" has the meaning provided in Section 16(b).

"Overadvance" as of any date of determination, the amount by which the Obligations outstanding as of such date (including, without limitation, all accrued and unpaid Lender Group Expenses) is greater than any of the limitations set forth in Section 2.1 or Section 2.11, as applicable,

"Participant" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of the Agreement.

"Payoff Date" means the first date on which all of the Obligations are paid in full and the Commitments of the Lenders are terminated.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Dispositions" means:

- (a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of business;
- (b) sales of Inventory to buyers in the ordinary course of business,
- (c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,
- (d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,
- (e) any sale or other disposition described in Schedule 5.16,
- (f) [reserved],
- (g) any involuntary loss, damage or destruction of property,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets of Borrower or its Subsidiaries in the ordinary course of business to the extent such leases or subleases are in existence as of the Closing Date,

(j) [reserved],

(k) the lapse of registered patents, trademarks and other intellectual property of Borrower and its Subsidiaries to the extent not economically desirable in the conduct of their business and so long as such lapse is not materially adverse to the interests of the Lenders,

(l) [reserved],

(m) the making of a Permitted Investment, and

(n) any trade-in of Equipment in exchange for the Equipment in the ordinary course of business.

"Permitted Holder" means any of the following: (i) Access and its respective Affiliates and (ii) any investment fund or vehicle managed, sponsored or advised by Access or any Affiliate thereof.

"Permitted Indebtedness" means

(a) Indebtedness evidenced by the Agreement or the other Loan Documents, as well as Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit,

(b) Indebtedness set forth on Schedule 4.19 and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Permitted Purchase Money Indebtedness and Capital Lease Obligations and any Refinancing Indebtedness in respect of such Indebtedness,

(d) endorsement of instruments or other payment items for deposit,

(e) Existing Secured Obligations, including any Indebtedness reinstated by the Bankruptcy Court and constituting Reinstated Existing Secured Obligations,

(f) Indebtedness incurred in the ordinary course of business under indemnity, performance, surety, statutory, appeal and similar bonds, worker's compensation claims, bonds, letters of credit and completion guarantees,

(g) [reserved],

(h) the incurrence by Borrower or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate,

commodity, or foreign currency risks associated with Borrower's and its Subsidiaries' operations and not for speculative purposes,

(i) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or Cash Management Services, in each case, incurred in the ordinary course of business,

(j) [reserved],

(k) the Existing First Lien Term Debt in an aggregate principal amount not to exceed \$6,200,000, the Existing Second Lien Term Debt in an aggregate principal amount not to exceed \$240,000,000, plus in each case any capitalized interest and fees thereon and any refinancing of such Indebtedness, in each case to the extent permitted by the Existing Term Debt Intercreditor Agreement,

(l) the Term Debt in an aggregate principal amount not to exceed \$50,000,000 and any refinancing of such Indebtedness, to the extent permitted by the Financing Order,

(m) Indebtedness composing Permitted Investments,

(o) Indebtedness to Encana in an amount not to exceed \$10,000,000,

(p) Indebtedness to SBI Trading Company in an amount not to exceed \$7,200,000 under Capitalized Lease Obligations to be incurred by Borrower,

(q) Guarantees of the Indebtedness under the Loan Documents,

(r) Guarantees by Borrower of Indebtedness of a Subsidiary of Borrower, provided that such Indebtedness is Permitted Indebtedness,

(s) Indebtedness arising from agreements of Borrower or a Subsidiary of Borrower providing for customary indemnification in connection with a Permitted Disposition,

(t) Guarantees by any Subsidiary of Borrower of Indebtedness of Borrower or any Subsidiary of Borrower, provided that such Indebtedness is Permitted Indebtedness,

(u) [reserved],

(v) [reserved], and

(w) [reserved].

"Permitted Intercompany Advances" means loans made by (a) a Loan Party to another Loan Party, (b) a non-Loan Party to another non-Loan Party and (c) a non-Loan Party to a Loan Party, so long as the parties thereto are party to the Master Reaffirmation of Prepetition Loan Documents, dated as of the date hereof, in each case in the ordinary course of business.

"Permitted Investments" means:

- (a) Investments in cash and Cash Equivalents,
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,
- (c) advances made in connection with purchases of goods or services in the ordinary course of business,
- (d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries.
- (e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1,
- (f) guarantees permitted under the definition of Permitted Indebtedness, and
- (g) Permitted Intercompany Advances.

"Permitted Liens" means:

- (a) Liens granted to, or for the benefit of, Agent to secure the Obligations,
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that are not yet delinquent and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,
- (c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of the Agreement,
- (d) Liens set forth on Schedule P-2; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date and any Refinancing Indebtedness in respect thereof,
- (e) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business so long as such leases, subleases, licenses or sublicenses do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries and do not secure any Indebtedness,
- (f) purchase money Liens on Equipment or Real Property or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof,

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,

(h) Liens on amounts deposited to secure Borrower's and its Subsidiaries obligations in connection with worker's compensation or other unemployment insurance,

(i) Liens on amounts deposited to secure Borrower's and its Subsidiaries obligations in connection with the making or entering into of bids, tenders, leases, purchase, construction, sales or servicing contracts in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure Borrower's and its Subsidiaries reimbursement obligations with respect to surety, performance or appeal bonds obtained in the ordinary course of business and pledges on amounts deposited to obtain or secure obligations with respect to letters of credit, bonds or other sureties or assurances given in the ordinary course of business in connection with the activities described in clauses (h) and (i) above and this clause (j) in the ordinary course of business,

(k) with respect to any Real Property, easements, rights of way, and zoning restrictions and other similar restrictions as to the use of Real Properties that do not materially interfere with or impair the use or operation thereof,

(l) licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,

(n) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business,

(o) Liens in favor of customs and revenue authorities arising as a matter of law granted to secure payment of customs duties in connection with the importation of goods to the extent such customs duties are permitted under the definition of Permitted Indebtedness,

(p) Liens granted or authorized by the Financing Orders, including, without limitation, replacement Liens granted to Existing Agent,

(q) Liens granted to, or for the benefit of, Existing Agent to secure the Existing Secured Obligations,

(r) Liens on the assets of Borrower to secure the Term Debt or Liens on Term Debt Collateral otherwise permitted under the Term Debt Documents in accordance with the Existing Term Debt Intercreditor Agreement and Financing Order,

(s) Liens on spare parts Inventory in favor of SB Boomerang Tubular, LLC to the extent set forth in that certain Equipment Lease Agreement dated as of February 18, 2011 between Borrower and SB Boomerang Tubular, LLC, as amended by that certain Amendment to Equipment Lease dated as of June 10, 2014, but only so long as either (i) SB Boomerang Tubular, LLC has executed and delivered to Agent an acknowledgment, in form and substance satisfactory to Agent, of or (ii) the Financing Order expressly provides for the subordination of SB Boomerang Tubular, LLC's Liens on such spare parts Inventory to Agent's Liens and Existing Agent's Liens and the Existing Agent's Liens,

(t) Liens on the Term Debt Collateral to secure the Existing First Lien Term Debt and the Existing Second Lien Term Debt in accordance with the Existing Term Debt Intercreditor Agreement and Financing Order,

(u) Liens on the Real Property of Borrower located at 1100 FM 3361, Liberty Texas set forth on Schedule B to the Loan Policy of Title Insurance issued by Alamo Title Insurance to Agent dated as of December 16, 2010,

(v) Liens on Equipment in favor of SBI Trading Company,

(w) Liens on Inventory and Accounts in favor of Encana, but only so long as either (i) Encana has executed and delivered to Agent an acknowledgment of the subordination of its Liens on the Inventory and Accounts to Agent's Liens, in form and substance satisfactory to Agent or (ii) the Financing Order expressly provides for the subordination of Encana's Liens on the Inventory and Accounts to Agent's Liens and the Existing Agent's Liens,

(x) Liens arising from precautionary UCC financing statement filings regarding operating leases entered into by Borrower or any of its Subsidiaries in the ordinary course of business,

(y) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or any of its Subsidiaries in the ordinary course of business, and

(z) Liens on amounts deposited securing Hedge Agreements permitted hereunder so long as the related Indebtedness is, and is permitted to be hereunder, secured by a Lien on the same property securing such Hedge Agreement.

"Permitted Overadvance" means \$5,000,000.

"Permitted Priority Liens" means all Permitted Liens that had priority over the Liens in favor of Agent and Lenders solely to the extent that such Liens are valid, perfected and non-avoidable as of the Filing Date, subject to the terms of the Financing Order, or as otherwise agreed to by the Agent.

"Permitted Protest" means the right of Borrower or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes, or rental payment, provided that (a) a reserve with respect to such obligation is established on Borrower'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 Borrower or its Subsidiary, as applicable, in good faith, (c) Borrower provides Agent with notice of such protest and (d) Agent is satisfied in its Permitted Discretion that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding at any one time not in excess of an amount equal to the greater of \$10,000,000 and 5% of Consolidated Total Assets, without regard to the Purchase Money Indebtedness permitted under clause (p) of the definition of Permitted Indebtedness.

"Permitted Variance" means, with respect to the Borrower's cash receipts and disbursements, (i) all favorable variances, (ii) an unfavorable variance of no more than 15.0% with respect to the first four weeks after the Closing Date and on a rolling, weekly basis with respect to each subsequent four-week period. A Default or Event of Default shall not be deemed to occur on account of the failure to meet any aggregate cash receipts covenant in this Agreement if the Loan Parties receive sufficient additional receipts within three (3) Business Days after the applicable date of determination that, when added to the receipts as of the applicable date of determination, would enable the Loan Parties to satisfy such covenant.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Priority ABL Obligations" means the "Prepetition Priority ABL Debt" as defined in the Financing Order.

"Prohibited Preferred Stock" means any Preferred Stock (other than Preferred Stock of Borrower constituting "Preferred Units" as defined in the LLC Agreement which are issued and outstanding on or as of the Closing Date) that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 1 year after the Maturity Date, or, on or before the date that is less than 1 year after the Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

"Projections" means Borrower's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Borrower's historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination:

(a) subject to Section 2.3(b), with respect to a Lender's obligation to make Advances and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances by (y) the outstanding principal amount of all Advances,

(b) subject to Section 2.11(a), with respect to a Lender's obligation to participate in Letters of Credit and Reimbursement Undertakings, to reimburse the Issuing Lender, and right to receive payments of fees with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances by (y) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero, and

(c) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate amount of Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances, by (y) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of Borrower and its Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of a bank or securities intermediary located within the United States.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by Borrower or its Subsidiaries and the improvements thereto.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Refinancing Indebtedness" means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of the Lenders,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender Group as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

"Register" has the meaning set forth in Section 13.1(h) of the Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of the Agreement.

"Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a) of the Agreement.

"Reinstated Existing Secured Obligations" means any Existing Secured Obligations constituting an Avoided Payment, to the extent such obligations have been reinstated, in each case, pursuant to, and subject to the requirements and terms of the final and nonappealable order of the Bankruptcy Court.

"Related Business" means those businesses in which the Borrower or any of its Subsidiaries is engaged on the Closing Date, or that are similar, related, complementary, incidental or ancillary thereto or extensions, developments or expansions thereof.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"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.

"Rent Reserve" means, with respect to any location leased by a Loan Party, a reserve in the amount equal to (a) the sum of all rental payments (including, without duplication, any additional rent) scheduled to come due in the next 3 months for such location (or if applicable law provides that the landlord would have a Lien (with priority over Agent's Lien) to secure past due rent for a longer period, all rental payments (including additional rent) scheduled to come due during such longer period), plus (b) any past due rent for such location.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Report" has the meaning specified therefor in Section 15.16 of the Agreement.

"Required Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (c) of the definition of Pro Rata Shares) exceed 50%; provided, however, that at any time there are 2 or more Lenders, "Required Lenders" must include at least 2 Lenders.

"Restricted Junior Payment" means to (a) declare or pay any dividend or make any other payment or distribution on account of Stock issued by Borrower (including any payment in connection with any merger or consolidation involving Borrower) or to the direct or indirect holders of Stock issued by Borrower in their capacity as such (other than dividends or distributions payable in Stock (other than Prohibited Preferred Stock) issued by Borrower, or (b) purchase, redeem, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving Borrower) any Stock issued by Borrower.

"Revolver Commitment" means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Advances, *plus* (b) the amount of the Letter of Credit Usage.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a

country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

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

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means a security agreement, dated as of the Closing Date, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower and Guarantors to Agent.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Solvent" means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person's assets is greater than all of such Person's debts.

"Sponsor Guaranteed Amount" means \$500,000 of the principal amount of the Existing Secured Obligations that is guaranteed by Access Tubulars, LLC pursuant to that certain Limited Sponsor Guaranty, dated as of March 25, 2015, as amended, modified, supplemented or replaced from time to time.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Support Agreement" means that certain Plan Support Agreement dated as of June 8, 2015 by and among Loan Parties, Existing Agent, Existing Lenders, Existing First Lien

Term Debt Agent, certain Existing First Lien Term Debt Lenders, Existing Second Lien Term Debt Agent and certain Existing Second Lien Term Debt Lenders.

"Swing Lender" means WFCF or any other Lender that, at the request of Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of the Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, however, that Taxes shall exclude (i) any income or franchise tax imposed on the net income or net profits of any Lender or any Participant imposed (a) by the United States, (b) by any other jurisdiction (or by any political subdivision or taxing authority thereof) under the laws of which such Lender or such Participant is organized or has its principal office or maintains its applicable lending office, or (c) by any other jurisdiction (or by any political subdivision or taxing authority thereof) as a result of a present or former connection between such Lender or such Participant and such jurisdiction, political subdivision or taxing authority (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under, this Agreement or any other Loan Document), (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located as of the date of this Agreement, (iii) taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 16(c) or (d) of the Agreement, (iv) in the case of a Lender other than a Foreign Lender, backup withholding tax imposed under Section 3406 of the IRC (other than as a result of a change in law); (v) taxes that would not have been imposed but for a failure by Agent or a Lender (or any financial institution through which any payment is made to such Agent or Lender) to comply with the applicable requirements of Sections 1471 through 1474 of the IRC, or any applicable Treasury regulations promulgated thereunder or published administrative guidance implementing such law; and (vi) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16(a) of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Term Debt" means the Indebtedness under the Term Debt Documents.

"Term Debt Agent" means Cortland Capital Market Services LLC, in its capacity as administrative agent under the Term Debt Documents.

"Term Debt Collateral" means the Loan Parties' assets of the categories described in the definition of "Term Loan Collateral" in the Existing Term Debt Intercreditor Agreement that secure the Term Debt.

"Term Debt Credit Agreement" means that certain Debtor-in-Possession, dated as of the Closing Date among Borrower, Term Debt Agent, and the Term Debt Lenders, as amended, restated, replaced or otherwise modified from time to time as permitted herein.

"Term Debt Documents" means the Term Debt Credit Agreement and each other document securing or evidencing the Term Debt as in effect on the date hereof.

"Term Debt Lenders" means the lenders party to the Term Debt Credit Agreement.

"Total Commitment" means, with respect to each Lender, its Total Commitment, and, with respect to all Lenders, their Total Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 attached hereto or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Underlying Issuer" means Wells Fargo or one of its Affiliates.

"Underlying Letter of Credit" means a Letter of Credit that has been issued by an Underlying Issuer.

"United States" means the United States of America.

"Variance Report" means a variance report setting forth actual cash receipts and disbursements of Borrower and its Subsidiaries for the prior week and setting forth all variances, on a line-item and aggregate basis, from the amount set forth for such week as compared to the most recently approved Budget delivered prior to such variance on a weekly and cumulative basis (which shall be subject to the variances permitted hereunder) (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or Chief Restructuring Officer of the Borrower).

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

Schedule 3.1

The effectiveness of this Agreement is subject to the fulfillment, to the satisfaction (in form and substance) of Agent and each Lender, of each of the following conditions precedent:

- (a) Agent shall have received the Budget;
- (b) Agent shall have received evidence that appropriate financing statements have been duly filed in such office or offices as may be necessary or, in the opinion of Agent, desirable to perfect the Agent's Liens in and to the Collateral, and Agent shall have received searches reflecting the filing of all such financing statements;
- (c) Agent shall have received each of the following documents, in form and substance satisfactory to Agent, duly executed, and each such document shall be in full force and effect:
 - (i) a disbursement letter executed and delivered by Borrower to Agent regarding the extensions of credit, if any, to be made on the Closing Date, the form and substance of which is satisfactory to Agent,
 - (ii) the Security Agreement, and
 - (iii) a reaffirmation of the Existing Loan Documents.
- (d) Agent shall have received a certificate from the Secretary (or any Assistant Secretary or other authorized representative) of each Loan Party (i) attesting to the resolutions of such Loan Party's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Loan Party is a party, (ii) authorizing specific officers of such Loan Party to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such Loan Party;
- (e) Agent shall have received copies of each Loan Party's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary (or any Assistant Secretary or other authorized representative) of such Loan Party;
- (f) Agent shall have received a certificate of status with respect to each Loan Party, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Loan Party, which certificate shall indicate that such Loan Party is in good standing in such jurisdiction;
- (g) All first day and related orders (other than the Interim Order) to be entered by and all material motions and other documents to be filed with the Bankruptcy Court by the Debtors shall be in form and substance reasonably satisfactory to Required Lenders;
- (h) Agent shall have received certificates of status with respect to each Guarantor, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Guarantor) in which its failure to be duly qualified or licensed would constitute a Material

Adverse Change, which certificates shall indicate that such Guarantor is in good standing in such jurisdictions;

(i) Agent shall have received a certificate of insurance, together with the endorsements thereto, as are required by Section 5.6, the form and substance of which shall be reasonably satisfactory to Agent;

(j) Agent shall have received the Projections for the fiscal year ending 2015 and 2016, presented on a monthly basis, along with a business plan, each in form and substance satisfactory to Agent and Lenders;

(k) Borrower shall have paid all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement to the extent invoiced to Borrower no later than one Business day prior to the Closing Date;

(l) The Bankruptcy Court shall have entered the Interim Order within 3 calendar days of the Filing Date, in form and substance satisfactory to Agent, entered on Notice to such parties as may be reasonably satisfactory to Agent and the Lenders;

(m) Concurrently with the entry of the Interim Order, the Bankruptcy Court shall have entered an order after an interim hearing approving the incurrence of the Term Debt, in form and substance satisfactory to Agent and Lenders;

(n) Other than the Financing Order, (i) all governmental and third party consents and approvals necessary in connection with the DIP Revolving Facility shall have been obtained (without the imposition of any conditions that are not acceptable to the Agent and the Lenders in their reasonable discretion) and shall remain in effect, and (ii) no law or regulation shall be applicable, in the reasonable judgment of the Agent and the Lenders, that restrains, prevents or imposes materially adverse conditions upon the DIP Revolving Facility or the transactions contemplated hereby;

(o) There shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that, in the judgment of the Agent at the direction of the Lenders, prohibits, restricts or imposes a materially adverse condition upon the Borrower or the Guarantors, the DIP Revolving Facility or the exercise by the Agent at the direction of the Lenders of its rights as a secured party with respect to the Collateral;

(p) Other than the Bankruptcy Case, or as stayed upon the commencement of the Bankruptcy Case, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that (i) except as disclosed, if adversely determined, could reasonably be expected to result in a Material Adverse Change or (ii) restrains, prevents or imposes or can reasonably be expected to impose materially adverse conditions upon the DIP Revolving Facility, the Collateral or the transactions contemplated by the Loan Documents;

(q) The Agent, for the benefit of the Lenders, shall have a valid and perfected lien on and security interest in the Collateral on the basis and with the priority set forth in the Financing Order;

(r) No Material Adverse Change shall have occurred; and

(s) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Agent.

Schedule 5.2

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form satisfactory to Agent:

<p>Weekly (no later than the 2nd day of the subsequent week)</p>	<ul style="list-style-type: none"> (a) an Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records, (b) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Borrower's and its Subsidiaries' Accounts, (c) copies of open orders, invoices together with corresponding shipping and delivery documents, and credit memos together with corresponding supporting documentation, with respect to invoices and credit memos in excess of an amount determined in the sole discretion of Agent, from time to time, (d) Inventory system/perpetual reports specifying the cost and the wholesale market value of Borrower's and its Subsidiaries' Inventory, by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting), (e) a Borrowing Base Certificate, and (f) In-transit Inventory report and such other documentation pertaining thereto as specified by Agent from time to time.
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<p>Weekly beginning on the second week following the Closing Date (no later than Wednesday of such week)</p>	<p>(g) a Variance Report, along with a supplement to the Budget for one (1) additional week at the end thereof.</p>
<p>Monthly (no later than the 10th day of each month)</p>	<p>(h) a detailed aging, by total, of Borrower's Accounts, together with a reconciliation and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting),</p> <p>(i) a detailed calculation of those Accounts that are not eligible for the Borrowing Base, if Borrower has not implemented electronic reporting,</p> <p>(j) a detailed Inventory system/perpetual report together with a reconciliation to Borrower's general ledger accounts (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting),</p> <p>(k) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base, if Borrower has not implemented electronic reporting,</p> <p>(l) a summary aging, by vendor, of Borrower's and its Subsidiaries' accounts payable and any book overdraft (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting) and an aging, by vendor, of any held checks,</p> <p>(m) a detailed report regarding Borrower's and its Subsidiaries' cash and Cash Equivalents, including an indication of which amounts constitute Qualified Cash,</p>

	(n) a monthly Account roll-forward, in a format acceptable to Agent in its discretion, tied to the beginning and ending account receivable balances of Borrower's general ledger,
Four weeks after delivery of the initial Budget and every four weeks thereafter	(o) an update to the Budget for upcoming 13 weeks based on then-current information and assumptions.
Monthly (no later than the 30th day of each month)	(p) a reconciliation of Accounts, trade accounts payable, and Inventory of Borrower's general ledger accounts to its monthly financial statements including any book reserves related to each category.
Quarterly (and at such other times as Agent shall request)	(q) a report regarding Borrower's and its Subsidiaries' accrued, but unpaid, <i>ad valorem</i> taxes.
Annually	(r) a detailed list of Borrower's and its Subsidiaries' customers, with address and contact information.

Upon request by Agent	(s) copies of purchase orders and invoices for Inventory and Equipment acquired by Borrower or its Subsidiaries, and (t) such other reports as to the Collateral or the financial condition of Borrower and its Subsidiaries, as Agent may reasonably request.
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Schedule 5.1

Deliver to Agent, with copies to each Lender, each of the financial statements, reports, or other items set forth set forth below at the following times in form satisfactory to Agent:

<p>as soon as available, but in any event within 15 Business Days after the end of each month during each of Borrower's fiscal years</p>	<p>(a) an unaudited consolidated and consolidating balance sheet, income statement, and statement of cash flow covering Borrower's and its Subsidiaries' operations during such period, and</p> <p>(b) a Compliance Certificate</p>
<p>as soon as available, but in any event within 90 days after the end of each of Borrower's fiscal years</p>	<p>(c) consolidated and consolidating financial statements of Borrower and its Subsidiaries for each such fiscal year, audited by independent certified public accountants reasonably acceptable to Agent and certified, without any qualifications (including any (A) "going concern" or like qualification or exception (other than "going concern" qualifications solely as a result of impending maturity of the Advances within one year of the issuance of such certification), (B) qualification or exception as to the scope of such audit, or (C) qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of <u>Section 6.16</u>), by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management), and</p> <p>(d) a Compliance Certificate</p>
<p>as soon as available, but in any event 45 days after the end of each of Borrower's fiscal quarters (other than the fourth fiscal quarter of each fiscal year)</p>	<p>(e) an unaudited consolidated and consolidating balance sheet, income statement, and statement of cash flow covering Borrower's and its Subsidiaries' operations during such fiscal quarter</p>
<p>as soon as available, but in any event within 30 days prior to the start of each of Borrower's fiscal years,</p>	<p>(f) copies of Borrower's Projections, in form (including as to scope and underlying assumptions) reasonably satisfactory to Agent, in its Permitted Discretion, for the forthcoming fiscal year, month by month, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby.</p>

if and when filed by Borrower,	(g) Form 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K current reports, and (h) any other filings made by Borrower with the SEC.
promptly, but in any event within 5 days after Borrower has knowledge of any event or condition that constitutes a Default or an Event of Default,	(i) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto.
promptly after the commencement thereof, but in any event within 5 days after the service of process with respect thereto on Borrower or any of its Subsidiaries,	(j) notice of all actions, suits, or proceedings brought by or against Borrower or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to result in a Material Adverse Change.
promptly after the commencement of labor negotiations or strikes, but in any event within 5 days after Borrower has knowledge thereof,	(k) notice of labor negotiations or strikes.
promptly after the termination of any Material Contract, but in any event within 5 days after Borrower has knowledge thereof,	(l) termination of any Material Contract.
upon the request of Agent,	(m) any other information reasonably requested relating to the financial condition of Borrower or its Subsidiaries.

EXHIBIT 2

BUDGET

Boomerang Tube - Weekly Cash Flow

(\$ in '000's, except per ton data)	06/12/15 1	06/19/15 2	06/26/15 3	07/03/15 4	07/10/15 5	07/17/15 6	07/24/15 7	07/31/15 8	08/07/15 9	08/14/15 10	08/21/15 11	08/28/15 12	09/04/15 13	09/11/15 14	Emergence Costs	Total
Receipts	1,168	1,321	1,416	1,784	3,021	3,021	3,021	3,021	3,043	3,043	3,043	3,043	3,043	4,036	0	37,021
Operating Disbursements	11,363	5,064	4,127	4,127	3,958	4,229	3,958	3,958	3,182	3,453	3,182	3,182	3,182	4,846	3,319	65,132
Payroll, Healthcare and Other Benefits	1,235	330	735	275	735	330	735	375	330	745	330	745	275	745	1,000	8,920
Utility Deposit (Credit)	1,000	0	0	0	0	0	0	0	0	0	0	0	0	(1,000)	0	0
Capital Expenditures	112	112	112	163	0	0	0	0	200	200	200	200	200	0	0	1,500
Professional Fees:	813	813	813	813	288	288	288	288	230	230	230	230	230	0	5,781	11,331
Other Restructuring	0	0	0	0	0	0	0	0	0	0	0	0	0	0	239	239
Debt Service - Fees, Interest & Principal	1,474	353	16	116	15	355	15	443	15	0	361	15	564	313	0	4,056
Total Disbursements	15,997	6,671	5,804	5,494	4,996	5,202	4,996	5,064	3,957	4,628	4,302	4,372	4,450	4,904	10,339	91,178
Net Cash Flow	(14,829)	(5,350)	(4,388)	(3,710)	(1,976)	(2,181)	(1,976)	(2,043)	(915)	(1,585)	(1,260)	(1,330)	(1,408)	(868)	(10,339)	(54,157)
Cumulative Net Cash Flow	(14,829)	(20,179)	(24,567)	(28,276)	(30,252)	(32,433)	(34,409)	(36,452)	(37,367)	(38,952)	(40,212)	(41,542)	(42,949)	(43,818)	(54,157)	
TL DIP																
Beginning Balance	6,572	41,572	41,572	41,572	41,572	41,572	55,000	55,000	55,000	55,000	60,000	60,000	60,000	60,000	60,000	60,000
Advance	35,000	0	0	0	0	13,428	0	0	0	5,000	0	0	0	0	0	0
Ending Balance	41,572	41,572	41,572	41,572	41,572	55,000	55,000	55,000	55,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
ABL DIP																
Beginning Balance	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	34,987	34,987
Additional Borrowing / (Repayments)	0	0	0	0	0	0	0	0	0	0	0	0	0	2,229	0	0
Ending Balance	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	32,758	34,987	34,987	34,987
Cash																
Beginning Balance	0	20,171	14,821	10,433	6,724	4,748	15,995	14,019	11,976	11,061	14,476	13,216	11,887	10,479	11,839	11,839
Change in Cash	20,171	(5,350)	(4,388)	(3,710)	(1,976)	11,247	(1,976)	(2,043)	(915)	3,415	(1,260)	(1,330)	(1,408)	1,361	(10,339)	(10,339)
Ending Balance	20,171	14,821	10,433	6,724	4,748	15,995	14,019	11,976	11,061	14,476	13,216	11,887	10,479	11,839	1,500	1,500
Borrowing Base	29,995	30,835	31,610	32,134	32,465	32,797	33,128	33,459	33,530	33,601	33,672	33,743	33,814	34,193	34,193	34,193
Overadvance (Availability)	2,763	1,923	1,148	624	293	(38)	(370)	(701)	(772)	(843)	(914)	(985)	(1,056)	794	794	794
Max Overadvance	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Net Availability	2,237	3,077	3,852	4,376	4,707	5,038	5,370	5,701	5,772	5,843	5,914	5,985	6,056	4,206	4,206	4,206
Total Liquidity	22,409	17,898	14,285	11,100	9,455	21,034	19,389	17,677	16,833	20,319	19,130	17,871	16,534	16,045	5,706	5,706