



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 3, 2017

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CHAPTER 11
	§	
DEPENDABLE AUTO SHIPPERS, INC.,	§	CASE NO. 16-34855
<i>et al.</i>	§	(Jointly Administered with
	§	Case Nos. 16-34857 & 16-34858)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
USE CASH COLLATERAL OF EXISTING SECURED LENDER;
(II) GRANTING ADEQUATE PROTECTION FOR USE THEREOF; (III)
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING
PURSUANT TO SECTIONS 364(b), 364(c), AND 364(d) OF THE BANKRUPTCY CODE;
(IV) MODIFYING THE AUTOMATIC STAY TO ALLOW FOR THE
RELIEF REQUESTED HEREIN
(RELATED TO DOC NOS. 10 AND 11)**

This matter came before this Court on the Motions of Debtor for Interim and Final Orders:
(I) authorizing the Debtors to use cash collateral of existing secured lender; (II) granting adequate protection for use thereof; (III) authorizing the Debtors to obtain postpetition financing pursuant to Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code; (iv) modifying the automatic stay

to allow for the relief requested herein; and (v) scheduling final hearing [Docket Nos. 10 and 11] (the "Motions")¹, filed by Dependable Auto Shippers, Inc. ("DAS"), DAS Global Services, Inc. and DAS Government Services, LLC (collectively, the "Debtors"), the debtors and debtors-in-possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Chapter 11 Case"), under Sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules") seeking, among other things:

- (1) Authorization and approval for the Debtors to obtain postpetition loans, advances, and other financial accommodations from ADESA, Inc. ("ADESA"), party to the DIP Credit Agreement (as defined below), under, or in connection with the debtor-in-possession revolving credit facility (the "DIP Facility") on a final basis in an aggregate amount of no more than \$2.6 Million and otherwise in accordance with this Final Order (as defined below) secured by first priority perfected security interests in and liens, senior and above all other liens upon all of the Collateral, pursuant to Bankruptcy Code Sections 364(c)(2), 364(c)(3), and 364(d);
- (2) Authorization for the Debtors to enter into that certain Senior Secured Super Priority Debtor in Possession Priming Credit Agreement with ADESA, substantially in the form attached as Exhibit A to the Interim Order (the "DIP Credit Agreement") and this Final Order together with all other agreements, documents and instruments to be executed in connection therewith (collectively, the "DIP Loan Documents"), and to borrow upon entry of this Final Order an aggregate sum not to exceed \$2.6 Million to be used for working capital, provided that the disbursements of such amount must be made solely in accordance with the Budget (as defined in the DIP Credit Agreement) as such Budget may be, from time to time, amended in accordance with this Final Order;
- (3) Granting to ADESA, superpriority administrative expense claim status pursuant to Bankruptcy Code Sections 364(c)(1) and 507(b) in accordance with the terms of this Final Order;
- (4) Authorizing the Debtors to use Cash Collateral (as defined below) in accordance

¹ Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Motions or the DIP Credit Agreement (defined below).

with the terms set forth herein;

- (5) Granting adequate protection to each pre-petition secured lender under and in connection with the Pre-Petition Financing Documents and the Subordinated Pre-Petition Loan Documents (each as defined below) in accordance with the terms set forth in this Final Order; and
- (6) Modifying the automatic stay to the extent set forth in this Final Order and waiving the fourteen (14) day stay provisions of Bankruptcy Rules 4001(a)(3) and 6004(h).

Notice of the Motions and the relief requested therein, and the Final Hearing (as defined below) (the "Notice") having been served by the Debtors in accordance with Bankruptcy Rule 4001 on: (1) ADESA; (2) the United States Trustee for the Northern District of Texas (the "UST"); (3) the holders of the twenty largest unsecured claims of the Debtors' estates; (4) all parties known to the Debtors who hold any liens or security interests in the Debtors' assets, or who, to the Debtors' knowledge have asserted any liens on the Debtors' assets; and (5) all other parties designated to receive Notice as noted on the Debtors' Certificate of Service filed with the Court (collectively, the "Noticed Parties").

The Court held the initial hearing on the Motions on December 23, 2016 (the "Interim Hearing") and entered that certain Interim Order approving the Motions on December 23, 2016 (the "Interim Order").

The Court held a further hearing on January 10, 2017 (the "Second Interim Hearing") and together with the Interim Hearing, the "Interim Hearings") and entered that certain Second Interim Order further approving the Motions on January 12, 2017 (the "Second Interim Order", and together with the Interim Order, the "Interim Orders").

The Final Hearing on the Motions to consider the relief requested on a final basis was held by this Court on January 26, 2017 (the "Final Hearing").

Upon the record made by the Debtors at the Interim Hearings and the Final Hearing, including the Motions, and the filings and the pleadings in these cases, this Final Order shall

constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable as of the Petition Date.

The Court further having reviewed the Motions, been fully advised of the relevant facts and circumstances surrounding the Motions, and having conducted the Final Hearing pursuant to Bankruptcy Code Section 364 and Bankruptcy Rule 4001, objections, if any, having been withdrawn, resolved or overruled by the Court, and sufficient cause appearing therefore,

THE COURT HEREBY FINDS THAT:

A. On December 21, 2013, (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have retained possession of their respective property and continue their businesses as debtors-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

B. An official committee of unsecured creditors (a "Committee") has not been appointed in the Chapter 11 Cases.

C. The Court has jurisdiction over the Chapter 11 Case and this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. The Motions constitute core proceedings as defined in 28 U.S.C. § 157(b)(2). Venue over the Motions is proper under 28 U.S.C. §§ 1408 and 1409(a).

D. Under the circumstances, the Notice given by the Debtors of the Motions, the Final Hearing, and the relief sought herein has been given to the Noticed Parties pursuant to Bankruptcy Rule 4001. No other or further notice of the Final Hearing or the relief granted in this Final Order is necessary or required.

E. For purposes of this Final Order, the term "Cash Collateral" shall mean all property of the Debtors that constitutes cash collateral in which ADESA has an interest as provided in Bankruptcy Code Section 363(a), and shall include, without limitation:

- (i) all cash proceeds arising from the collection, sale, lease or other disposition, use or conversion of any property upon which ADESA holds a lien or a replacement lien, whether as part of its pre-petition collateral or pursuant to an order of the Court or applicable law or otherwise, and whether such property that has been converted to cash existed as of the commencement of this Chapter 11 Case or arose or was generated thereafter; and
- (ii) all of the respective deposits, refund claims and rights of the Debtors upon which ADESA holds a lien or replacement lien, whether as part of its pre-petition collateral or pursuant to an order of the Court or applicable law or otherwise.

F. Without prejudice to the rights of other parties in interest as set forth in paragraph 10(d), below, the Debtors stipulate and agree that:

- (i) On or about December 20, 2016, pursuant to a pre-petition Credit Agreement of the same date, supplemented and amended or otherwise modified from time to time (the "Pre-Petition Credit Agreement"), the Debtors borrowed \$1,070,960.00 plus interest, fees and expenses (the "Senior Pre-Petition Obligations") from ADESA upon the terms and conditions described in the Pre-Petition Credit Agreement (the "Pre-Petition Secured Loan"). The Pre-Petition Secured Loan was evidenced by a pre-petition Promissory Note (Revolving Note) dated as of December 20, 2016 (the "Pre-Petition Note"). The Pre-Petition Note is secured by a first priority security interest in all of the Debtors' assets (the "Pre-Petition Collateral") pursuant to and as more fully described in the Security Agreement dated

December 20, 2016 (the "Pre-Petition Security Agreement" together with the Pre-Petition Credit Agreement, the Pre-Petition Note, and all other agreements, documents and instruments executed in connection therewith, collectively the "Pre-Petition Financing Documents").

- (ii) On or about December 19, 2016, ADESA entered into that certain Sale, Assignment, and Assumption Agreement (the "Paragon Debt Purchase Agreement") with Independent Bankers Capital Fund II, L.P. ("IBCF"), Paragon Mezzanine Finance Group, LLC ("Paragon" and collectively with IBCF, the "Assignors") selling, transferring and assigning to ADESA all of the Assignors interest in that certain Securities Purchase Agreement, dated as of August 1, 2011 (as amended to date, the "Paragon Loan Agreement"), pursuant to which the Assignors had extended credit to DAS as evidenced by a Senior Secured Note, dated August 1, 2011 in the original principal amount of \$4,000,000 and a Senior Secured Note in the original principal amount of \$1,300,000 (collectively, the "Paragon Notes") in the current aggregate outstanding principal amount of \$6,076,476 plus interest, fees and expenses (the "Paragon Pre-Petition Obligations") originally secured by certain assets of DAS and certain of the shares of the capital stock of DAS (the "Paragon Pre-Petition Collateral", as more particularly set forth in the "Security Agreement," the "Stock Pledge Agreement" and the "Collateral Assignment Agreements" (the "Paragon Collateral Documents" and together with the Paragon Debt Purchase Agreement, Paragon Loan Agreement, the Paragon Notes, and all other agreements, documents and

instruments executed in connection therewith, the “Paragon Loan Documents”). The Paragon Pre-Petition Collateral is comprised of certain assets and interests of DAS, including, but not limited to, equipment, intellectual property and proceeds thereof, and interests in a certain facility lease in Mesquite, Texas, all of which is included in Pre-Petition Collateral. DAS repurchased all shares of capital stock of DAS pursuant to that certain Securities Repurchase Agreement between the Assignors and DAS on December 19, 2016; and, as such, the Paragon Pre-Petition Collateral no longer includes any equity interests in DAS;

- (iii) The Debtors have consented and agreed that ADESA is a valid and perfected pre-petition, first priority secured creditor in the Pre-Petition Collateral and that the Senior Pre-Petition Obligations and the Paragon Pre-Petition Obligations (collectively, the “Pre-Petition Obligations”) constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the Debtors and are not subject to any offset, defense, counterclaim, setoff or defense of any kind or nature or any description which would affect the validity, enforceability and nonavoidability of any Pre-Petition Obligations;
- (iv) As of the Petition Date, ADESA is a valid and perfected pre-petition, first priority secured creditor in all of the Debtors' assets and that ADESA is entitled to adequate protection for the use of its Cash Collateral and that the Debtors do not possess and will not assert any offset, defense, counterclaim, setoff or defense of any kind or nature or any description which would affect

the validity, enforceability and nonavoidability of any of ADESA's liens, claims or security interests in the Pre-Petition Collateral.

G. The Debtors acknowledge that ADESA is entitled to adequate protection resulting from the: (i) provisions of this Final Order granting first priority or priming liens on the Pre-Petition Collateral to ADESA; (ii) the Debtors' use of Cash Collateral; (iii) the use, sale or lease or other diminution in value, if any, in any Pre-Petition Collateral and/or the (iv) imposition of the automatic stay pursuant to Bankruptcy Code Section 362(a), or otherwise pursuant to Bankruptcy Code Sections 361(a), 363(c), 364(c) and 364(d)(1) (the amount of any such diminution being referred to herein as "Adequate Protection Obligation"). ADESA does not consent to the Debtors' use of Cash Collateral except on the terms provided in this Final Order. Further, pursuant to Bankruptcy Code Sections 361, 363 and 507(b), the Debtors have agreed to provide ADESA adequate protection. Based upon the Motions, and the representations made at the Interim Hearings and the Final Hearing, the terms of the proposed Adequate Protection Obligation and the use of Cash Collateral are fair and reasonable. Nothing set forth in this Final Order, however, shall prejudice, impair, limit or otherwise affect ADESA's right to seek new, different or additional adequate protection.

H. The Debtors need to enter into the DIP Credit Agreement, obtain the DIP Facility and use Cash Collateral in order to prevent immediate and irreparable harm to the bankruptcy estate and minimize disruption to and avoid the termination of its business operations. Without authority to use Cash Collateral and to obtain financing on the terms and conditions set forth in the DIP Credit Agreement and related DIP Loan Documents, the Debtors will be unable to meet their post-petition obligations. Approval of the Debtors' use of Cash Collateral and approval of

the DIP Credit Agreement and entry of this Final Order will also enhance the possibility of maximizing the value of the Debtors' assets.

I. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code Section 503(b)(1) sufficient to finance the operations of their business. Except as provided below, the Debtors are unable to obtain credit allowable under Bankruptcy Code Sections 364(c)(1), (c)(2), (c)(3) or 364(d) on terms more favorable than those offered by ADESA. The Debtors have an immediate need for financing pursuant to the DIP Loan Documents.

J. The terms of the DIP Loan Documents have been negotiated at arm's length, and the DIP Facility is being extended in "good faith", as that term is used in Bankruptcy Code Section 364(e).

K. The terms and conditions of the DIP Loan Documents are fair and reasonable, the best available to the Debtors 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.

L. Under the circumstances of the Chapter 11 Case, ADESA's provision of the DIP Facility, and the entry of this Final Order, is in the best interest of the Debtors' bankruptcy estates and their creditors.

M. The Court has reviewed the Budget attached to this Final Order as Exhibit B for the period from and after the Petition Date to May 6, 2017, (the "Budget Period"). ADESA has agreed to the use of Cash Collateral in accordance with the Budget, the Interim Order, this Final Order, and the DIP Loan Documents. As such all Cash Collateral and all proceeds of the Pre-Petition Collateral, including proceeds realized from a sale or disposition thereof, or from payment thereon, shall be used and/or applied consistent with the terms and conditions of the Interim Order, this

Final Order, and the DIP Loan Documents, including, but not limited to, for the types of expenditures and in the amounts set forth in the Budget and for no other purpose.

N. The Notice provided by Debtor of the Motions to the Noticed Parties satisfies the requirements of Bankruptcy Rules 2002, 4001(b) and (c), and 9014, Bankruptcy Code Sections 102(1), 363, 364(c) and (d), and applicable Local Rules and was otherwise sufficient and appropriate under the circumstances.

O. Sufficient cause exists for the entry of the Final Order and for the waiver of the fourteen (14) day stay of Bankruptcy Rules 4001(a)(3) and 6004(h). Any objections made to the entry of this Final Order (to the extent that the objections have not been overruled, withdrawn, or resolved by the consent of the parties) are hereby overruled.

P. Based upon the foregoing, and after due consideration and good cause appearing therefore,

THE COURT HEREBY ORDERS THAT:

1. The Motions shall be, and hereby are, GRANTED on a final basis as set forth herein.

2. To the extent not specifically addressed in this Final Order, all written and oral objections to the Motion are OVERRULED.

3. Budget. The Budget, attached hereto as Exhibit B, is approved (the “Approved Budget”). During the term of the DIP Facility and this Final Order, with respect to line items in the Approved Budget related to receipts in the forecast, the Debtor shall be permitted to make disbursements, including those which would constitute a Permitted Variance without the prior written consent of ADESA. For the avoidance of doubt under this Final Order, a Permitted Variance shall mean (a) any favorable variance, (b) an unfavorable variance of not more than 15%

with respect to (i) any disbursement line item or (ii) the aggregate cash receipts, and (c) an unfavorable variance of not more than 10% with respect to combined aggregate receipts and disbursements; provided, however, that it shall also be a Permitted Variance if there is an unfavorable variance of any amount with respect to aggregate receipts or combined aggregate receipts and disbursements for a weekly Testing Period as long as any unfavorable variance is not more than the 15% and 10% variance threshold described above for the respective cumulative Testing Period. Any amounts or expenses identified in the Approved Budget that are unused in any week or interim period may be carried over and used by the Debtors in any subsequent week or interim period with respect to the same line item.

4. Authorization to Use Cash Collateral.

Subject to the terms and conditions of this Final Order, and to the adequate protection granted to or for the benefit of ADESA, the Debtors are authorized during the Budget Period to use Cash Collateral in each case for the types of expenditures set forth in the Approved Budget. The Approved Budget may be amended, supplemented, modified, restated, replaced, or extended with the prior written permission of ADESA. Should the Approved Budget be amended, the Debtors shall enter a Notice of Amendment of Budget on the docket and the UST, any Committee and any party in interest shall have ten (10) days to object to the amended Budget, which if no objections are filed, shall become the Approved Budget without further order of this Court. Nothing in this Final Order shall authorize any disposition of the assets of the Debtors or their respective estates outside of the ordinary course of business or other proceeds resulting therefrom, without Court approval.

5. Adequate Protection. As adequate protection for the Debtors' use of Cash Collateral, ADESA is hereby granted, to the extent of and in the aggregate amount equal to the

diminution in value of ADESA's interests from and after the Petition Date, resulting from the Debtors' use, sale or lease, of the Pre-Petition Collateral, the subordination of ADESA's liens therein, and the payment of any expenses incurred in the Chapter 11 Case, or the imposition or enforcement of the automatic stay of Bankruptcy Code Section 362 (collectively, the "Diminution in Value"), replacement security interests in and liens upon all post-petition collateral (the "Adequate Protection Liens") to the same extent and validity and priority as the security interests held by ADESA in the Pre-Petition Collateral as of the Petition Date. These Adequate Protection Liens will be subject to the payment of case expenses and the amount of the Carve-Out (as defined below). Also with respect to Diminution in Value, ADESA will have a super priority administrative expense claim (the "Adequate Protection Super Priority Claim"), as provided by Bankruptcy Code Section 507(b). The Adequate Protection Super Priority Claim will be considered an administrative expense allowed under Bankruptcy Code Section 503(b), and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and their estates and the proceeds thereof.

6. Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the Adequate Protection Liens and the priming liens granted to ADESA without the necessity of filing, or recording any financing statement, deed of trust, mortgage or any other instrument or document that may otherwise be required by law of any jurisdiction or taking of any other action to validate or perfect any liens granted by the Interim and Final Orders.

7. Authorization to Incur DIP Debt.

(a) DIP Loan Documents. The Debtors have executed and delivered the DIP Loan Documents, and are hereby authorized and have agreed to:

(1) execute any additional documents that ADESA reasonably requests to implement the transactions contemplated by the DIP Loan Documents; and

(2) perform their obligations under and comply with all of the terms and provisions of the DIP Loan Documents, the Interim Orders, and this Final Order. The DIP Loan Documents constitute valid and binding obligations of the Debtors enforceable in accordance with their terms; provided, however, that to the extent any conflict exists among the terms of the Motions, the DIP Loan Documents, the Interim Orders and this Final Order shall govern and control.

- (b) Permitted Uses of DIP Loan Proceeds. The Debtors are authorized and have agreed to incur the Obligations under the DIP Credit Agreement solely: (1) in accordance with the terms and provisions of the DIP Credit Agreement and this Final Order; (2) to pay the expenses enumerated in the Approved Budget, to the extent required, including the Carve-Out, as and when such expenses become due and payable; and (3) to pay the interest as contemplated by the DIP Credit Agreement. If ADESA advances monies to the Debtors and the Debtors use such monies other than in accordance with the terms or provisions of this Final Order, such advances shall be considered Obligations for purposes of this Final Order.

- (c) Certain Material Terms of DIP Credit Agreement.
- (i) Maximum Amount. The maximum principal amount of Obligations outstanding shall not at any time exceed the Commitment set forth in Section 2 of the DIP Credit Agreement.
- (ii) Interest. The Obligations shall bear interest at a per annum rate equal to equal to twelve percent (12%) (the "DIP Loan Interest Rate").
- (iii) Maturity. The Obligations shall mature and be due and payable in full by Debtor upon a Termination Event.
- (d) Superpriority Administrative Expense Status; Postpetition Liens. The Obligations are hereby granted superpriority administrative expense status under Bankruptcy Code Section 364(c)(1), with priority over all costs and expenses of administration of the Chapter 11 Case that are incurred under any provision of the Bankruptcy Code, subject to the Carve-Out. In addition, ADESA is hereby granted Liens on the Collateral on a post-petition basis (the "DIP Liens") to secure the Obligations. Until the Obligations are paid in full, the DIP Liens: (i) pursuant to Bankruptcy Code Sections 364(c)(2), (c)(3) and 364(d), are first priority senior secured Liens (subject only to Prior Permitted Liens specified in the DIP Credit Agreement) secured by the Collateral (without any further action by the Debtors or ADESA and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments); (ii) with respect to any designated accounts and any other

deposit accounts or securities accounts shall be, and hereby are, deemed to confer "control" for purposes of applicable law as in effect as of the date hereof in favor of ADESA; (iii) shall not be subject to any security interest or lien which is avoided and preserved under Bankruptcy Code Section 551; (iv) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Chapter 11 Case; (v) shall not be subject to Bankruptcy Code Section 510(c); and (6) shall not be subject to any landlord's lien, bailee's rights, right of distraint or levy, security interest or other interest that any landlord, bailee, warehousemen or landlord's mortgagee may have in the Collateral located on such leased premises. Notwithstanding the foregoing, the Debtors shall execute and deliver to ADESA such financing statements, mortgages, instruments and other documents as ADESA may request from time to time, and any such documents filed by ADESA shall be deemed filed as of the Petition Date.

- (e) Prohibition Against Additional Debt. The Debtors will not incur or seek to incur debt secured by a lien which is equal to or superior to the DIP Liens, or which is given superpriority administrative expense status under Bankruptcy Code Section 364(c)(1), unless, in addition to the satisfaction of all requirements of Bankruptcy Code Section 364, ADESA has consented to such order.
- (f) Nothing in this order or any prior order shall be construed to grant or acknowledge liens that prime valid, perfected and unavoidable ad valorem property tax liens.

8. Covenants. The Debtors shall have complied with the milestones set forth in this paragraph 8.

- (a) Filing of Disclosure Statement and Plan. Debtors shall have filed with this Court a plan of reorganization in form and substance acceptable to ADESA (the "Plan") that gives effect to the terms of this Final Order and the DIP Credit Agreement and a disclosure statement in form and substance acceptable to ADESA (the "Disclosure Statement") on or before January 27, 2017.
- (b) Approval of Disclosure Statement or Filing of Sale Motion. Either (i) the Disclosure Statement shall have been approved by this Court, or, in the alternative (ii) Debtors' shall have filed a motion to effectuate the sale process for all or substantially all of Debtors' assets on terms acceptable to ADESA pursuant to Bankruptcy Code Section 363 (the "363 Sale"), in either case on or before March 10, 2017.
- (c) Confirmation of Plan or Approval of 363 Sale Motion. Either (i) the Plan shall have been confirmed by this Court or, in the alternative, (ii) an order approving the 363 Sale shall have been entered by this Court on or before April 21, 2017.
- (d) Consummation. The effective date of the Plan or the closing of a 363 Sale shall have occurred on or before May 6, 2017.

The Debtors and the DIP Lender may agree to amend or modify the foregoing covenants without the need of further notice and hearing or order of this Court (other than a notice of such amendment

or modification to be filed with this Court and any corresponding notice of Amendment to Budget as may be required to be filed with this Court).

9. Termination Event; Rights and Remedies.

- (a) Termination Event Defined. For the purposes of this Final Order, a Termination Event shall be the earliest of any of the events set forth in the definition of “Maturity Date” in the DIP Credit Agreement.
- (b) Effect of a Termination Event. Upon a Termination Event at ADESA's election, ADESA may take such actions to declare the Commitment terminated as are set forth in Section 10 of the DIP Credit Agreement pursuant to the procedures set forth therein except and solely to the extent that, upon a Termination Event, (i) ADESA shall be required to advance funds to the Debtors' estate (which shall be Obligations) in an amount sufficient to pay all accrued but unpaid administrative claims incurred in the ordinary course of the Debtors' business in accordance with the terms of the Approved Budget (subject to any prior Permitted Variance) arising in the time period between the effective date of the DIP Facility through the Maturity Date; and, (ii) ADESA shall be required to pay any obligations arising under the DIP Credit Agreement relating to the Carve-Out after issuance of a Carve-Out Trigger Notice.
- (c) Rights and Remedies. On the sixth (6th) business day after a Termination Event, and upon notice to the UST, Dallas County², and any Committee, if

² Dallas County shall be defined as the following ad valorem taxing units: Dallas County, the Dallas County Community College District and the Parkland Hospital District.

one is appointed, at ADESA's election, and without further order of the Court: (i) ADESA shall have automatic and immediate relief from the automatic stay with respect to the Collateral (without regard to the passage of time provided for in Bankruptcy Rule 4001(a)(3)), and shall be entitled to exercise all rights and remedies available under the DIP Loan Documents and applicable non-bankruptcy law; and (ii) the Debtors shall surrender the Collateral and otherwise cooperate with ADESA in the exercise of its rights and remedies under the DIP Loan Documents and applicable non-bankruptcy law, including, without limitation, by filing a motion to retain one or more agents to sell, lease or otherwise dispose of the Collateral upon the request and subject to terms and conditions acceptable to ADESA.

- (d) Right to Contest a Termination Event. In the event that ADESA declares that a Termination Event has occurred under the DIP Loan Documents, the Debtors shall have five (5) business days in which to cure the Termination Event. During such five (5) business day period, the Debtors may also seek an emergency determination from the Court solely with respect to whether a Termination Event has occurred.

10. Carve-Out.

- (a) Carve-Out Terms. There shall be a carve-out for UST fees and professionals fees and expenses (the "Carve-Out") that is not subject to the DIP Liens, ADESA's superpriority administrative expense status under Bankruptcy Code Section 364(c)(1), or any other protections granted to ADESA under this Final Order.

- (b) Specifically, the Carve-Out shall mean an amount equal to the sum of the following: (i) all fees required to be paid to the Clerk of the Court and to the UST under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; and (ii) to the extent allowed by the Bankruptcy Court at any time, and subject to the Approved Budget, all accrued and unpaid fees, disbursements, costs and expenses of professionals or professional firms retained by the Debtors and any Committee formed in the Chapter 11 Case accrued or incurred at any time before or on the date and time of the delivery by ADESA of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice, plus fees, costs, and expenses incurred by the aforementioned professionals after the date of the Carve-Out Trigger Notice in an amount not to exceed \$50,000 in the aggregate; provided, however, that nothing in the DIP Credit Agreement or this Final Order shall be construed to impair the right of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity.
- (c) Carve-Out Usage. The Debtors have unconditionally stipulated to the validity, first priority and amount of ADESA's liens in the Collateral. No portion of the Carve-Out and no loans arising under the DIP Credit Agreement or any Collateral may be used to pay any fees or expenses incurred by any entity, including the Debtors, any creditors' or the professionals retained by those entities, in connection with claims or causes of action adverse to ADESA's interests in the Collateral, including (i)

preventing, hindering or delaying ADESA's enforcement or realization upon any of the Collateral once a Termination Event has occurred; (ii) using or seeking to use Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Collateral without ADESA's consent other than in the ordinary course of business; or (iii) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the DIP Liens or any mortgages, liens or security interests with respect thereto or any other rights or interests of ADESA, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against ADESA; provided, however, that \$15,000 of the Carve-Out may be used to pay fees and expenses incurred by the professionals retained by any Committee in connection with the investigation of the validity, priority, enforceability and amount of the Pre-Petition Secured Loan and Paragon Notes, and the liens securing same.

- (d) Any right by any party (other than the Debtors, who have stipulated to the validity, first priority and amount of ADESA's Liens, and who shall not have any challenge or objection rights pursuant to this paragraph) to object to ADESA's Liens, including, but not limited to the validity, extent, perfection or priority of ADESA's Liens in and to any Collateral, or the validity, allowability, enforceability, priority status or amount of the Pre-Petition Obligations, or bring suit against ADESA in connection with or related to any matters covered by the liens in and to the Pre-Petition

Collateral must be brought no later than sixty (60) days after the entry of the Second Interim Order, which occurred on January 12, 2017. If an objection or challenge is not filed within the time period set forth in this paragraph, then ADESA's liens in and to the Collateral shall be allowed in full, and the liens shall be recognized and allowable as legal, valid, binding, in full force and effect, non-avoidable, perfected and senior to all other liens in the pre-petition collateral with respect to all parties in this case (subject only to Prior Permitted Liens), and shall not be subject to any counterclaims, set off, recoupment, deduction, or claim or any kind or any defenses or any further objection or challenge by any party at any time.

- (e) The Carve-Out does not prevent the Court's review of, and any parties in interest's objection to, any professional fees and expenses.

11. No Surcharge. In the exercise of their business judgment, the Debtors agree that there shall be no surcharge of the Collateral for any purpose, unless agreed to by ADESA. Further, the Debtors represent that the Budget contains all expenses that are reasonable and necessary for the operation of their businesses and the preservation of the Collateral through the Budget Period for which the Budget runs, and therefore includes all items potentially chargeable to ADESA under Bankruptcy Code Section 506(c). The Debtors (or any subsequently appointed trustee) are deemed to have waived any rights, benefits or causes of action under Bankruptcy Code Section 506(c), the enhancement of collateral provisions of Bankruptcy Code Section 552, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) as they may relate to or be asserted against ADESA or the Collateral. In reliance on the foregoing, ADESA has agreed to the entry of this Final Order.

12. Waiver of Right to Return/Consent to Setoff. Absent Court approval, the Debtors shall not unilaterally: (a) return any of the Collateral pursuant to Bankruptcy Code Section 546(h); (b) consent to any order permitting any claims pursuant to Bankruptcy Code Section 503(b)(9) (provided that nothing contained herein shall require the Debtors to oppose any claims made thereunder); and (c) consent to setoff pursuant to Bankruptcy Code Section 553 (provided that nothing contained herein shall require the Debtors to oppose any setoff asserted thereunder).

13. Indemnification. The Debtors shall indemnify, defend and hold harmless ADESA in accordance with terms of the DIP Loan Documents.

14. No Marshaling. None of the Collateral shall be subject to the doctrine of marshaling.

15. DIP Loan Charges. All interest set forth in the DIP Loan Documents shall be promptly paid by the Debtors in accordance with the Interim Order, this Final Order and the DIP Loan Documents, without need for filing an application with the Court for approval or payment thereof.

16. Modification of Stay. The automatic stay of Bankruptcy Code Section 362 is hereby modified with respect to ADESA to the extent necessary to effectuate the provisions of this Final Order, including, after a Termination Event, to allow ADESA to exercise its rights contemplated above.

17. Right to Credit Bid. In any sale or sale process approved by this Court which includes the Collateral (whether pursuant to Bankruptcy Code Section 363, a plan of reorganization or otherwise), ADESA reserves the right to credit bid, and the Debtors shall not object to ADESA's right to credit bid.

18. Reporting. The Debtors shall provide ADESA all written reports, appraisals and documentation reasonably requested by ADESA.

19. Access. ADESA and its agents shall have access upon reasonable notice during normal business hours to the Debtors and the Debtors' business premises and to the Collateral and all have the right to review, appraise, and evaluate the physical condition of the Collateral and to inspect the financial records and all other records of the Debtors relating to the operations of the Debtors. The Debtors shall fully cooperate with ADESA regarding such review, evaluations, and inspections, and shall make their employees and professionals reasonably available to ADESA and its professionals and consultants to conduct such reviews, evaluations, and inspections.

20. No Waiver. ADESA shall not be deemed to have suspended or waived any of its rights or remedies under the Interim Orders, this Final Order, the DIP Credit Agreement, the Paragon Loan Documents, the Bankruptcy Code, and applicable non-bankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of ADESA and directed to the Debtors. No failure of ADESA to require strict performance by the Debtors (or by any subsequently appointed trustee) of any provision of this Final Order shall waive, affect, or diminish any right of ADESA thereafter to demand strict compliance and performance therewith, and no delay on the part of ADESA in the exercise of any right or remedy under the Interim Orders, this Final Order, the DIP Loan Documents, the Bankruptcy Code, or applicable non-bankruptcy law shall preclude the exercise of any right or remedy.

21. "Responsible Person." By taking any actions pursuant to this Final Order, ADESA shall not: (a) be deemed to be in control of the operations or liquidation of the Debtors; or (b) be deemed to be acting as a "responsible person" with respect to the operation, management or liquidation of the Debtors.

22. Release. Upon the date that the Obligations are paid in full in cash and prior to the release of the DIP Liens, the Debtors shall execute and deliver to ADESA a general release of any and all claims and causes of action that could have been asserted or raised under or in connection with the DIP Loan Documents.

23. Amendments. The Debtors and ADESA may enter into amendments or modifications of the DIP Loan Documents or the Approved 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 the Court as provided in paragraph 4.

24. Proof of Claim. ADESA shall not be required to file a proof of claim with respect to any of the Pre-Petition Obligations or the Obligations, and the stipulations and findings set forth in this Final Order shall constitute a formal claim in respect thereof.

25. Binding Effect. Except as otherwise provided herein, the Interim Orders and this Final Order shall be binding on all parties in interest in the Chapter 11 Case and their respective successors and assigns, including any trustee appointed in the Chapter 11 Case or appointed upon conversion to a case under Chapter 7 of the Bankruptcy Code, except that any trustee shall have the right to terminate this Final Order after notice and a hearing. If this Final Order does not become a final non-appealable order in accordance with Bankruptcy Code Section 364(e), if a trustee is successful in terminating this Final Order, or if any of the provisions of the Final 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: subject to the other provisions of this Final Order, the stipulations, representations, and findings contained in the Interim Order, this Final Order and the relief granted by and the releases contained in the Interim Order and this Final

Order (including, without limitation, the paragraphs of the Interim Order and this Final Order respecting the priority, validity, enforceability or effectiveness of any lien, security interest or other benefit or claim authorized hereby with respect to Obligations 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 the Interim Order and this Final Order, and ADESA shall be entitled to all the rights, remedies, privileges and benefits granted in the Interim Order and this Final Order, including the liens and priorities granted herein, with respect to the Obligations. Except as otherwise explicitly set forth in the Interim Order and this Final Order, no third party is intended to be, or shall be deemed to be, a third party beneficiary of the Interim Order and this Final Order.

26. Survival. The provisions of the Interim Orders and this Final 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 Chapter 11 Case: (a) confirming any chapter 11 plan, (b) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, (c) dismissing the Chapter 11 Case, (d) withdrawing of the reference of the Chapter 11 Case from this Court, or (e) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Case in this Court. The terms and provisions of the Interim Order and this Final Order, including, without limitation, the rights granted ADESA under Bankruptcy Code Sections 364(c) and 364(d), shall continue in full force and effect until all of the Obligations are indefeasibly paid in full in cash and discharged.

27. Triumph. Notwithstanding anything to the contrary herein in, in resolution and full and final satisfaction of the claim against Debtor DAS of TBK Bank, SSB f/k/a Triumph Savings Bank SSB ("TBK") as evidenced by proof of claim no. 6 filed herein (the "TBK Claim"), and as

adequate protection to be paid to TBK of such claim, TBK is authorized to set off the balance of such claim (which balance shall not exceed \$ 150,800.94)³ against the Cash Collateral held by TBK in accounts (the “TBK Accounts”) subject to the loan and security agreement, account control agreements and account pledge agreements attached to such proof of claim. Within two Banking Days following the entry of the Second Interim Order, TBK shall pay to the Debtors all remaining collected funds in the TBK Accounts after the foregoing setoff and after deducting any applicable wire transfer fees (the “Current TBK Account Balance”) in accordance with wire transfer instructions to be furnished to TBK (the “Wire Transfer Instructions”). Subject to the last sentence of this paragraph, on January 13, 2017 and each succeeding Friday, TBK shall remit to the Debtors in accordance with such Wire Transfer Instructions any additional collected funds received from the Debtors’ account debtors after deducting any applicable wire transfer fees (the “Future TBK Account Balance” and, together with the Current TBK Account Balance, the “TBK Account Balance”). The Debtors agree to indemnify and hold TBK harmless from and against any and all loss, cost, damage, fee, charge or expense, including attorneys’ fees and legal expenses which TBK may suffer or incur as a result of any non-payment, protest, claim, refund, dishonor, charge-back, or debit of any checks, drafts, automated clearing house entries, wire transfers, or other similar items received by TBK from the Debtors or any of the Debtors’ account debtors which comprise the TBK Account Balance, (i) which items have been credited to any deposit account maintained by TBK with respect to, or in the name of the Debtors, and (ii) proceeds of which items have been remitted to the Debtors pursuant to this Second Interim Order (individually and collectively, a “Return Item Loss”). TBK will not otherwise be entitled to hold a reserve as protection against such Return Item Loss.

³ \$150,673.30 less proceeds of sale of Peterbilt Truck.

28. Continuing Jurisdiction. The Court shall retain jurisdiction with respect to all matters arising from and related to the implementation, interpretation, and enforcement of this Final Order.

END OF ORDER

Order submitted by:

D. Michael Lynn

State Bar I.D. No. 12736500

John Y. Bonds, III

State Bar I.D. No. 02589100

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**Proposed Attorneys for the Debtors and
Debtors-in-Possession**

EXHIBIT A

DIP CREDIT AGREEMENT

**SENIOR SECURED SUPER PRIORITY
DEBTOR-IN-POSSESSION PRIMING LOAN AGREEMENT**

This SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION PRIMING LOAN AGREEMENT (this "Agreement") is dated as of December __, 2016 and is by and among Dependable Auto Shippers, Inc., a Texas corporation, DAS Global Services, Inc., a Texas corporation, and DAS Government Services, LLC, a Delaware limited liability company, each of which is for profit and will become a debtor-in-possession under the Bankruptcy Code (as defined below) ("Borrowers"), and ADESA, Inc., an Indiana corporation, as lender (the "DIP Lender").

WITNESSETH:

WHEREAS, Borrowers will file voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court (the "Bankruptcy Court") on or about December 21, 2016 (the date of filing to be known as the "Petition Date");

WHEREAS, Borrowers will be continuing in the possession of their assets and in the management of their business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Before the Petition Date, Borrowers entered into a certain Credit Agreement as of December 19, 2016 (the "Pre-petition Credit Agreement") by and among Borrowers and Lender, pursuant to which the Lender extended credit to Borrowers on the terms and conditions described therein.

WHEREAS, as of the Petition Date, DIP Lender is owed approximately \$1,100,000 in obligations incurred directly by Borrowers on a \$1,200,000 revolving credit facility, plus, interest, fees, costs, and expenses (the "Pre-petition Secured Debt").

WHEREAS, Borrowers have requested DIP Lender to provide a revolving credit facility (the "DIP Facility") to Borrowers in an amount not to exceed the aggregate principal amount of two-million six hundred thousand dollars (\$2,600,000.00) for the purposes described herein;

WHEREAS, to provide security for the repayment of the loans made available pursuant hereto and payment of the other obligations of Borrowers hereunder, Borrowers have agreed to provide DIP Lender, in each case, with Liens on the Collateral (as defined below); and

WHEREAS, DIP Lender is willing to make the requested DIP Facility available on the terms and conditions set forth in this Agreement, and so long as

- a. all post-petition credit obligations, to the extent provided herein, are: 1) secured by Liens on all property, rights and interests, real and personal, tangible and intangible of Borrowers, except with respect to a certain truck VIN INPWD49X1FD259113, which is subject to a first priority lien position held by Triumph Savings Bank, SSB dba Triumph Commercial Finance (as predecessor in interest to TBK Bank SSB) whether now owned or hereafter acquired; and 2)

are given superpriority status as is provided in the Interim Financing Order and Final Financing Order; and

- b. DIP Lender receives adequate protection for the use of cash collateral to the extent of the diminution in value of the Collateral and the priming of their liens and in each case securing the obligations of Borrowers for the Pre-Petition Secured Debt.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, Borrowers and DIP Lender agree as follows:

1. Definitions. The terms listed below shall be defined as follows:

“\$”, “USD” and “dollars” denotes the lawful currency of the United States of America.

“Advance” means a borrowing hereunder, made by DIP Lender to Borrowers on a Borrowing Date pursuant to a Borrowing Request and other requirements of Section 2.

“Approved Budget” shall have the meaning set forth in Section 9(a) hereof.

“Availability Period” means the period from the Closing Date to, but excluding, the Maturity Date.

“Available Commitment” means, at any time, the Commitment minus the outstanding aggregate total of the Loans at such time.

“Banking Day” shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in Dallas, Texas are authorized or required by Law to remain closed.

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

“Bankruptcy Court” shall have the meaning set forth in the recitals.

“Borrowing Date” means a date on which an Advance is made hereunder.

“Borrowing Request” means a Borrowing Request in the form attached hereto as Exhibit A, or such other form acceptable to DIP Lender.

“Budget” shall mean the Initial Approved Budget and each subsequent Approved Budget.

“Carve-Out” shall mean an amount equal to the sum of the following: (a) 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; (b) to the extent allowed by the Bankruptcy Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses of professionals or professional firms retained by Borrowers and any official committee of creditors accrued or incurred at any time before or on the date and time of the delivery by DIP Lender of a

Carve Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice, plus fees, costs, and expenses incurred by the aforementioned professionals after the date of the Carve-Out Trigger Notice in an amount not to exceed \$50,000 in the aggregate, unless agreed to by the DIP Lender; plus, in all cases, whether before or after the date of the Carve-Out Trigger Notice, payable to those professionals entitled to the Carve Out under this Agreement.

“Carve Out Trigger Notice” shall mean a written notice delivered by DIP Lender to Borrowers 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.

“Chapter 11 Cases” shall mean the cases to be filed under Chapter 11 of the Bankruptcy Code by Borrowers in their capacity as a debtor and debtor-in-possession in the Bankruptcy Court.

“Chief Financial Officer” shall mean Timothy Higgins, Borrowers’ Chief Financial Officer, or any successor thereto.

“Closing Date” shall mean the first Banking Day following the satisfaction of Conditions to Effectiveness as set forth in Section 5 hereof and the advance of funds by DIP Lender.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Collateral” means and includes all personal property, real property identified on Schedule 1(c) hereof and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of Borrowers (including under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from, Borrowers, and regardless of where located, including, without limitation: (a) cash and cash equivalents; (b) all funds in any account of Borrowers; (c) all accounts and other receivables; (d) contract rights; (e) instruments, documents and chattel paper; (f) securities (whether or not marketable); (g) equipment, inventory and fixtures; (h) real property and interests in real property; (i) leaseholds and interests in leaseholds; (j) franchise rights; (k) patents, tradenames, trademarks, copyrights and all other intellectual property; (l) general intangibles; (m) capital stock; (n) investment property; (o) supporting obligations; (p) letter of credit rights; (q) all commercial tort claims and all other claims and causes of action; (r) the proceeds of all claims or causes of action (excluding, subject to the entry of the Final Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code); and (s) to the extent not covered by the foregoing, all other assets or property of Borrowers, 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 Borrowers from time to time with respect to any of the foregoing, excluding all avoidance actions and proceeds of avoidance actions under chapter 5 of the Bankruptcy Code.

“Commitment” means the obligation of DIP Lender to make Loans to Borrowers in an aggregate amount not exceeding \$2,600,000.00.

“Commitment Fee” shall have the meaning set forth in Section 3(d) hereof.

“Default” shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Default Rate” shall have the meaning set forth in Section 3(b) hereof.

“DIP Facility” shall have the meaning set forth in the recitals.

“DIP Financing Order” means the Interim Order or the Final Order, as may be applicable.

“DIP Lender Carve-Out” shall mean on any date an amount equal to the aggregate Carve-Out on such date.

“DIP Loan Documents” shall mean this Agreement, the DIP Financing Order, and any other documents, instruments, or agreements delivered as security or collateral for, or a guaranty of, the Loans, or in connection with, or as support for, any of the foregoing, whether by a Borrower or a Third Party, and any updates or renewals thereof.

“Event of Default” shall have the meaning set forth in Section 10 hereof.

“Excluded Taxes” shall mean (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed by the United States of America or the jurisdiction where DIP Lender’s applicable lending office is located, (ii) U.S. Federal withholding Taxes imposed on amounts payable hereunder pursuant to the Law in effect as of the date of this Agreement, and (iii) U.S. Federal withholding Taxes imposed under FATCA.

“FATCA” shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version of such sections that are substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Final Order” shall mean a final, non-appealable order of the Bankruptcy Court approving the DIP Facility, in form and substance satisfactory to DIP Lender in its reasonable discretion.

“Indemnified Taxes” shall mean (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrowers under this Agreement or any other DIP Loan Document, and (ii) without duplication of any Taxes covered in subclause (i) of this definition, Other Taxes.

“Initial Approved Budget” shall mean the Budget attached hereto as Exhibit B.

“Interim Order” shall mean an interim order of the Bankruptcy Court approving the DIP Facility and entered in the Chapter 11 Case, in form and substance satisfactory to DIP Lender in its reasonable discretion.

“Law” shall mean any international, foreign, Federal, state or local statute, treaty, rule, guideline, regulation, ordinance, code, or administrative or judicial precedent or authority, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case whether or not having the force of law.

“Lien” shall mean, with respect to any asset, any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or other) or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable Laws of any jurisdiction).

“Loans” means the Advances made by DIP Lender to Borrowers pursuant to this Agreement.

“Main Office” means the main office of DIP Lender, currently located at 13085 Hamilton Crossing Boulevard, Suite 500, Carmel, Indiana 46032, or such other location as DIP Lender may designate as its main office.

“Material Adverse Effect” means any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, resulting in a material adverse change in, or a material adverse effect on, (i) the business, results of operations, financial condition, assets, liabilities or prospects of Borrowers taken as a whole (other than the commencement of the Chapter 11 Case and the continuation of the Chapter 11 Case), (ii) the ability of any Borrower to perform any of its respective obligations under the DIP Loan Documents, (iii) the rights and remedies of DIP Lender under any of the DIP Loan Documents, (iv) the legality, validity or enforceability of any of the DIP Loan Documents or the DIP Financing Order, (v) the value of the Collateral, or (vi) the perfection or priority of the Liens granted pursuant to the DIP Loan Documents or the DIP Financing Order.

“Maturity Date” means the earliest of (i) _____, _____, (ii) if the Final Order has not been entered within thirty (30) days after the Interim Order, the thirtieth (30th) day after the date the Interim Order is entered, unless agreed to by the DIP Lender and (iii) the date of the acceleration of the Loans and/or the termination of the Commitment pursuant to Section 10.

“Obligations” shall mean all amounts owing by Borrowers to DIP Lender pursuant to or in connection with this Agreement or any other DIP Loan Document including, without limitation, all principal, interest, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all reasonable fees and expenses of counsel to DIP Lender incurred pursuant to this Agreement or any other DIP Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder.

“Other Taxes” means, collectively, all present or future stamp, court, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt of security interests in, or otherwise with respect to this Agreement or any other DIP Loan Document.

“Payment Date” means the first Banking Day of each month.

“Permitted Variance” means (i) any favorable variance, (ii) an unfavorable variance of not more than 15% with respect to (A) any disbursement line item or (B) the aggregate cash receipts, and (iii) an unfavorable variance of not more than 10% with respect to combined aggregate receipts and disbursements; provided, however, that it shall also be a Permitted Variance if there is an unfavorable variance of any amount with respect to aggregate receipts or combined aggregate receipts and disbursements for a weekly Testing Period as long as any unfavorable variance is not more than the 15% and 10% variance thresholds described above for the respective cumulative Testing Period. Any amounts or expenses identified in the Budget that are unused in any week or interim period may be carried over and used by the Debtors in any subsequent week or interim period with respect to the same line item.

“Plan” means a plan of reorganization filed by Debtors in accordance with the Bankruptcy Code in a form and substance reasonably acceptable to DIP Lender.

“Requirements of Law” shall mean, as to Borrowers, the articles or certificate of incorporation and by-laws or other organizational or governing documents of Borrowers, and each federal, state, local and foreign law, treaty, rule or regulation or determination of an arbitrator or a court or other governmental authority, in each case applicable to or binding upon Borrowers or any of their property or to which Borrowers or any of their property is subject.

“Superpriority DIP Claims” shall mean all of the claims of DIP Lender on account of the Obligations, which claims shall be entitled to the benefits of Section 364(c)(1) of the Bankruptcy Code, having a superpriority over any and all administrative expenses of the kind that are specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject to the Carve-Out.

“Tax” or “Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholding (including backup withholding), assessments, fees, value added tax or any other goods, services, use or sales tax, or other charges imposed by any governmental authority, including, without limitation, any interest, additions to tax, or penalties applicable thereto.

“Testing Period” shall have the meaning set forth in Section 9(j) hereof.

“Third Party” shall mean any party liable with respect to, or otherwise granting support for, this Agreement, whether by guaranty, subordination, grant of security or otherwise.

“Third Party Lienholder” shall have the meaning set forth in Section 4(a)(ii) hereof.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of Texas; provided that if by reason of mandatory provisions of Law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of DIP Lender in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than California, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Variance Report” shall have the meaning set forth in Section 9(a) hereof.

Unless otherwise defined herein or the context otherwise requires, any terms that are not capitalized and used herein, but which are defined in the UCC, have the respective meanings provided in the UCC including, without limitation: (i) as-extracted collateral; (ii) certificated security; (iii) chattel paper; (iv) documents; (v) electronic chattel paper; (vi) financial assets; (vii) goods, (viii) instruments; (ix) inventory; (x) investment property; (xi) payment intangibles; (xii) proceeds; (xiii) securities account; (xiv) securities intermediary; (xv) security; (xvi) security certificate; (xvii) security entitlements; and (xviii) uncertificated security.

2. Credit Facility.

(a) Commitment. Subject to the terms and conditions set forth herein (including the conditions to borrowing set forth in Sections 5 and 6 hereof), DIP Lender agrees to make Loans to Borrowers, from time to time during the Availability Period, provided that aggregate Advances shall not exceed the then Available Commitment. The initial draw shall not exceed the aggregate amount of \$_____, pursuant to Bankruptcy Court approval, which shall be used to pay approved amounts as set forth in the Budget to cover two weeks of operations. During the Availability Period, Borrowers shall be entitled to borrow and to prepay Loans in accordance with the terms and conditions of this Agreement; provided, however, that (i) Borrowers may not borrow any amounts hereunder should an Event of Default exist; and (ii) Borrowers may not re-borrow Loans that have been prepaid. The Commitment shall terminate on the Maturity Date and DIP Lender shall have no further obligation to make Advances to Borrowers.

(b) Advances; Minimum Amount of Each Advance. Other than with respect to the initial draw, the Chief Financial Officer, on behalf of Borrowers, shall give DIP Lender irrevocable notice of each borrowing by delivering a Borrowing Request by 11:00 a.m. prevailing Central time not less than one (1) Banking Day prior to the date of each requested Advance; provided, however, that (i) no Loan shall be in an amount less than \$25,000, (ii) unless agreed to by the DIP Lender Borrowers shall not be permitted to deliver a Borrowing Request more frequently than once per calendar week, and (iii) Borrowers shall not be permitted to request Loans (and DIP Lender shall not be required to fund Loans) in excess of Borrowers’ cash needs for the two (2) calendar weeks immediately following the date of the Borrowing Request (as set forth in an Approved Budget).

(c) Payment Upon Maturity Date. Borrowers, jointly and severally, hereby promise to pay to the order of DIP Lender at its Main Office the principal amount of all outstanding Loans as of and when due, either consistent with this Agreement or on the Maturity Date or as agreed to by the DIP Lender and the Debtors, plus all accrued interest, fees and other Obligations then outstanding.

(d) Repayment of Advances. Borrowers shall have the right to repay Advances at any time or from time to time, provided that: (i) Borrowers shall give DIP Lender irrevocable notice of each prepayment by 11:00 a.m. prevailing Central time, not less than two (2) business days prior to the date of prepayment of a Loan; and (ii) all prepayments of Loans shall be in a minimum amount equal to the lesser of \$25,000 or the unpaid principal amount of the Loans outstanding under this Agreement.

(e) Notes. The Commitment shall be evidenced by one or more promissory notes in such form as is reasonably acceptable to DIP Lender executed by Borrowers and payable to DIP Lender, as such notes may be amended from time to time, including any and all promissory notes which may be issued to DIP Lender after the date of this Agreement (each a “Note,” and collectively the “Notes”). Neither an original or a copy of any Note shall be required to establish or prove any Obligation. In the event any Note is lost, mutilated or destroyed, Borrowers shall execute a replacement thereof and deliver such replacement to DIP Lender upon demand.

3. Interest Payment, Interest Payment Date, Interest and Fees.

(a) Interest. Each advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made at a rate per annum equal to eight percent (12%) (the “Interest Rate”).

(b) Rates Applicable After Default; Late Payment. Notwithstanding anything to the contrary herein, after the occurrence of an Event of Default, DIP Lender may, at its sole option, by notice to the Borrower, declare that no Advance be made. After the occurrence and during the continuance of a Default, DIP Lender may, at its option, declare that each Advance shall bear interest at the default rate of interest, which equals the Interest Rate plus 5% per annum (the “Default Rate”). Any payment required to be made by Borrowers under this Agreement which is not made within five (5) days of the Payment Date or date payment is due shall be subject to a late charge equal to 5% of the amount of the payment.

(c) Payment Date. Interest accrued on each Advance shall be payable on each Payment Date, commencing with the first such date to occur after the date hereof and at maturity. Interest shall be due and payable on the Maturity Date and shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. All payments hereunder shall be made in lawful money of the United States and in immediately available funds. Any extension of time for the payment of the interest of this Agreement resulting from the due date falling on a non-Banking Day shall be included in the computation of interest. The date, amount, and the interest rate with respect to each Loan evidenced hereby and all payments of principal thereof shall be recorded by DIP Lender on its books and, at the discretion of DIP Lender prior to any transfer of this Agreement at any other time, may be endorsed by DIP Lender on a schedule. Any such endorsement shall be conclusive absent manifest error. Borrowers waives presentment, notice of dishonor, protest and any other notice or formality with respect to this Agreement.

(d) Commitment Fee. Borrowers agree to pay to DIP Lender a commitment fee (the “Commitment Fee”) in an amount equal to 2% of the Commitment, which shall be fully-earned upon the Closing Date and shall be payable on the Maturity Date; provided, however, that the Commitment

Fee shall be calculated based upon a Commitment equal to the amount of Loan authorized by the Interim Order until entry of the Final Order, at which time the Commitment Fee shall be calculated based upon a Commitment equal to \$2,600,000.00.

4. Priority and Collateral Security.

(a) Superpriority Claims and Collateral Security. Subject to the Carve Out, the Obligations shall be treated as Superpriority Claims, pursuant to section 364(c)(1) of the Bankruptcy Code and secured by Liens on Collateral, which are hereby granted by Borrowers to DIP Lender, the priority of which Liens shall be set forth in orders of the Bankruptcy Court, which shall provide that DIP Lender is granted the following Liens:

(i) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and unavoidable first priority Liens on, and security interests in all Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable Liens as of the Petition Date;

(ii) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable second priority Liens on an security interests in all Collateral which is encumbered by valid, enforceable, perfected and non-avoidable Liens of a third-party; and

(iii) pursuant to section 364(d) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable Liens and security interests in all Collateral securing the Pre-petition Secured Debt, which liens and security interests shall be senior to an prime the Liens securing the Pre-petition Secured Debt.

5. Conditions To Effectiveness. The obligation of DIP Lender to make Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in the absolute discretion of DIP Lender):

(a) DIP Lender (or its counsel) shall have received the following:

(i) a counterpart of this Agreement signed by each Borrower;

(ii) an executed copy of the Note(s) signed by each Borrower;

(iii) copies of duly executed resolutions, in form and substance satisfactory to DIP Lender in its reasonable discretion, of the board of directors (or similar governing body) of each Borrower authorizing the execution, delivery and performance of the DIP Loan Documents to which it is a party;

(iv) a duly executed Borrowing Request with respect to any Loan made on the Closing Date.

(b) All legal matters incident to this Agreement and the borrowings hereunder shall be reasonably satisfactory to DIP Lender.

(c) All 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 DIP Lender in its reasonable discretion.

(d) The Bankruptcy Court shall have entered the Interim Order, in form and substance satisfactory to DIP Lender in its reasonable discretion.

(e) DIP Lender 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 Interim Order, and such Lien of DIP Lender shall be senior to all other Liens except as otherwise provided in any DIP Financing Order and Section 11 of this Agreement.

6. Conditions to All Credit Extensions. The obligation of DIP Lender to make a Loan on the occasion of any borrowing is subject to the satisfaction of each of the conditions set forth in Section 5 on the date of such Loan (other than those conditions expressly required to be satisfied on the Closing Date) and the following additional conditions:

(a) The Petition Date shall have occurred.

(b) Borrowers shall have delivered to DIP Lender an appropriate Borrowing Request, duly executed and completed, by the time specified in, and otherwise as permitted by, this Agreement.

(c) The representations and warranties made by Borrowers herein shall be true and correct in all material respects at and as if made as of such date (in each case immediately prior to, and after giving effect to, the funding of any Loans) except to the extent they expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date.

(d) No Default or Event of Default shall exist or be continuing either prior to or after giving effect to the making of such Loan.

(e) The making of such Loan (and the use of the proceeds therefrom) shall not violate any Law and shall not be enjoined, temporarily, preliminarily or permanently.

(f) No Material Adverse Effect shall have occurred.

(g) The making of such Loan complies with the Budget, in all respects, or has otherwise been approved in writing by DIP Lender.

(h) With respect to any Loans made after the Closing Date, the DIP Financing Order shall have been entered approving the DIP Facility, in form and substance satisfactory to DIP Lender in its reasonable discretion, which DIP Financing Order 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 DIP Lender.

(i) Any Law, ruling, judgment, order, injunction or other restraint exists that, in the reasonable judgment of DIP Lender, prohibits, restricts or imposes a materially adverse condition on

Borrowers, the DIP Facility or the exercise by DIP Lender of its rights as a secured party with respect to the Collateral.

(j) Any borrowing hereunder shall be limited to the amount that is required to fund disbursements permitted under the Budget or otherwise available for use by Borrowers.

The delivery of each Borrowing Request shall constitute a representation and warranty by Borrowers of the satisfaction of each of the conditions specified in subsections (c) through (j) above.

7. Indemnified Taxes. Borrowers agree that all payments made pursuant to or on account of this Agreement or any other DIP Loan Document shall be made by Borrowers free and clear and without deduction or withholding for any Tax, except as required by applicable Law. If any applicable Law requires the deduction of or withholding of any Tax from any such payment, then Borrowers shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by Borrowers pursuant to or on account of this Agreement or any other DIP Loan Document shall be increased as necessary so that after such deduction or withholding has been made (including any such deduction or withholding that may be applicable to additional sums payable under this Section) DIP Lender shall receive an amount equal to the amount it would have received had no such deduction or withholding been made. Borrowers shall provide to DIP Lender evidence of such payment made to the relevant governmental authority within thirty (30) days thereof and shall also provide to DIP Lender any official tax receipt or other documentation issued by the appropriate governmental authorities with respect to the payment of Indemnified Taxes. Borrowers hereby agree that they shall, jointly and severally, indemnify and reimburse DIP Lender, on demand, for any loss, liability, or expense incurred by DIP Lender as a result of any failure by Borrowers to pay Indemnified Taxes as and when due, whether or not such Indemnified Taxes were correctly or legally imposed by the relevant governmental authority. Borrowers shall timely pay to the relevant governmental authority or, at the option of DIP Lender, reimburse it for Other Taxes.

8. Representations. Borrowers, jointly and severally, represent and warrant that:

(a) Upon approval of the Bankruptcy Court, the DIP Loan Documents constitute the legal, valid and binding obligations of Borrowers, enforceable against Borrowers in accordance with their terms.

(b) Upon approval of the Bankruptcy Court, the execution, delivery and performance by Borrowers of the DIP Loan Documents and all other documents contemplated hereby or thereby, and the use of the proceeds of any of the Loans, do not and will not, subject to the use of proceeds used to pay off prior secured obligations: (i) conflict with or constitute a breach of, or default under, or require any consent under, or result in the creation of any Lien, charge or encumbrance upon the property or assets of any Borrower pursuant to any other agreement or instrument (other than any pledge of or security interest granted in any Collateral pursuant to any DIP Loan Document) to which any Borrower is a party or is bound or by which its properties may be bound or affected; or (ii) violate any provision of any Law (including, without limitation, Regulation U of the Federal Reserve Board), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to any Borrower.

(c) Upon entry of the Interim Order (with respect to the interim borrowings) and upon entry of the Final Order, no consent, approval or authorization of, or registration, declaration or filing with, any governmental authority or other person or entity is required as a condition to or in connection with the due and valid execution, delivery and performance by Borrowers of any DIP Loan Document.

(d) Except for the Chapter 11 Case, and except for any other litigation identified to DIP Lender in writing and to the best of the Borrowers knowledge, there are no actions, suits, investigations or proceedings pending or threatened at law, in equity, in arbitration or by or before any other authority involving or affecting: (i) Borrowers that, if adversely determined, are likely to have a Material Adverse Effect; (ii) any material part of the assets or properties of Borrowers or any part of the Collateral (if any) under any DIP Loan Document; or (iii) any of the transactions contemplated in the DIP Loan Documents. Except as have been disclosed, there are currently no material judgments entered against any Borrower, and no Borrower is in default with respect to any judgment, writ, injunction, order, decree or consent of any court or other judicial authority, which default is likely to have or has had a Material Adverse Effect.

(e) Each Borrower 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.

(f) This Agreement, taken together with the Interim Order and/or the Final Order is effective to create in favor of DIP Lender legal, valid, enforceable and continuing first priority Liens on, and security interests in, the Collateral pledged hereunder or thereunder, in each case subject to no Liens other than with respect to Liens permitted under the DIP Financing Order. 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 Liens. Pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations of Borrowers under this Agreement will constitute allowed administrative expense claims in the Chapter 11 Case under Section 364(c) of the Bankruptcy Code, having priority over all administrative expense claims and unsecured claims against Borrowers now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person, subject to the Carve-Out.

(g) Each Borrower is or will be as of the Closing and as of the date of any Advance in compliance with the terms and conditions of the DIP Financing Orders. Each of the Interim Orders (to the extent necessary, 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 DIP Lender, in its reasonable discretion, amended or modified and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

(h) A true and complete copy of the Initial Approved Budget, as agreed to with DIP Lender as of the Closing Date, is attached as Exhibit B hereto.

Each borrowing request by Borrowers under this Agreement shall constitute a representation and warranty that the statements above are true and correct both on the date of such request and on

the date of the borrowing. Each borrowing request shall also constitute a representation that no Default or Event of Default under this Agreement has occurred and is continuing or would result from such borrowing.

9. Covenants. Borrowers agree that so long as DIP Lender has any Commitment hereunder or any Obligation or other amount payable hereunder or under any DIP Loan Document (in each case other than contingent indemnification obligations) remains unpaid:

(a) Borrowers shall provide to DIP Lender: (i) monthly consolidated unaudited financial statements of Borrowers within thirty (30) days of month-end, certified by the Chief Financial Officer or approved signatory; (ii) quarterly consolidated unaudited financial statements of Borrowers within forty-five (45) days of fiscal quarter-end, certified by the Chief Financial Officer; (iii) every four weeks after the Closing Date, an updated 13-week cash flow forecast, in each case, in form and substance satisfactory to DIP Lender in its reasonable discretion (each such forecast approved by DIP Lender, an “Approved Budget”) for the subsequent 13 week period consistent with the form of the Initial Approved Budget; (iv) beginning on the second Wednesday following the Closing Date and on each Wednesday following, a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements of Borrowers 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 each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer or approved signatory of Borrowers. Borrowers will promptly provide notice to DIP Lender of the existence of any Material Adverse Effect and of any event, occurrence of circumstance that could reasonably be expected to result in a Material Adverse Effect.

(b) Further, Borrowers will provide to DIP Lender such other reports and information as may be reasonably requested by DIP Lender. In addition, Borrowers will use reasonable efforts to cause their accountants, financial advisors, consultants and parties providing management services to Borrowers to cooperate, consult with and provide to DIP Lender all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of Borrowers.

(c) Borrowers will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable Law, or which DIP Lender may reasonably request, to effectuate the transactions contemplated by this Agreement and the other DIP Loan Documents or to grant, preserve, protect or perfect the Liens created by this Agreement, the DIP Financing Order or other DIP Loan Documents or the validity or priority of an such Lien, all at the expense of Borrowers.

(d) Except for and to the extent permitted under the DIP Financing Orders, Borrowers will not, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien which is *pari passu* with or senior to the claims or Liens, as the case may be, of DIP Lender against Borrowers hereunder or under the DIP Financing Order, or apply to the Bankruptcy Court for authority to do so.

(e) Borrowers will not, directly or indirectly (i) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of the Interim Order or the Final Order except for any modifications and amendments agreed to in writing by DIP Lender, (ii) apply to the Bankruptcy Court for authority to take any action prohibited by this Agreement (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of DIP Lender) or (iii) seek authorization for, or permit the existence of, any claims other than that of DIP Lender entitled to a superpriority under Section 364(c)(1) of the Bankruptcy Code that is senior or *pari passu* with DIP Lender's Section 364(c)(1) claim, other than the Carve-Out.

(f) Borrowers shall not make or commit to make payments to critical vendors (other than those critical vendors that are approved in writing by DIP Lender) in respect of prepetition amounts in excess of the amount included in the Budget.

(g) Borrowers will provide notice to DIP Lender of, and reasonably consult with DIP Lender regarding, any plans and motions to assume or reject executory contracts or unexpired leases.

(h) Except as otherwise provided herein or approved by DIP Lender, Borrowers will not, and will not permit any subsidiary to directly or indirectly (i) use any cash or the proceeds of any Loans in a manner or for a purpose other than those consistent with this Agreement, the DIP Financing Order and the Budget, (ii) permit a disbursement that would cause any Budget variance that would not otherwise constitute a Permitted Variance without the prior written consent of DIP Lender or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or debt arising prior to the Petition Date other than payments authorized by the Bankruptcy Court and in compliance with the Budget.

(i) Unless as provided in the DIP Order, no Collateral or proceeds of Loans may be used directly or indirectly by Borrowers, any committee, any trustee or other estate representative appointed in the Chapter 11 Case (or any successor case) 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 that are senior to, or on a parity with, the Liens in favor of DIP Lender or the Superpriority DIP Claims (except to the extent expressly set forth in this Agreement); or

(ii) to 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 DIP Lender, in its capacity as DIP Lender or otherwise, its 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, 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 Obligations, the

Superpriority DIP Claims or the DIP Loan Documents, (D) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations, (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to DIP Lender in the DIP Financing Orders or under any of the DIP Loan Documents (including, without limitation, claims, proceedings or actions that might prevent, hinder or delay DIP Lender's assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the applicable DIP Loan Documents and the Interim and/or Final Order), or (F) objecting to, contesting, or interfering with, in any way, DIP Lender's enforcement or realization upon any of the Collateral once an Event of Default has occurred.

(j) Borrowers shall remain in material compliance with the Initial Approved Budget and any subsequent Approved Budget for each Testing Period. To comply with the Initial Approved Budget or any subsequent Approved Budget, Borrowers (i) shall not exceed any disbursement line item set forth in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for any Testing Period by more than the Permitted Variance, (ii) shall collect cash receipts (excluding proceeds of the DIP Facility that may be deemed a receipt) in an amount not less than the aggregate amount of such cash receipts in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for each Testing Period (subject to the Permitted Variance), and (iii) shall not have combined net receipts and disbursements less than the combined net amount in the Initial Approved Budget or any subsequently Approved Budget, as applicable, for any Testing Period (subject to the Permitted Variance). The Permitted Variance with respect to each Testing Period shall be determined and reported to DIP Lender not later than the Wednesday immediately following each such Testing Period. Budget compliance shall be tested each week after the Closing Date and shall be tested on a weekly and cumulative basis from the Closing Date (each, a "Testing Period").

(k) Except as otherwise provided herein or approved by DIP Lender, Borrowers will not use any cash or the proceeds of the DIP Facility in a manner or for a purpose other than those consistent with an Approved Budget and this Interim Order.

(l) To the extent permitted by the Bankruptcy Court, Borrowers shall file their schedules and statement of affairs with the Bankruptcy Court no later than twenty-eight (28) days after the Petition Date.

10. Events of Default. If any of the following events of default shall occur (each an "Event of Default"):

(a) Borrowers shall fail to pay (i) the principal of this Agreement as and when due and payable within five (5) days of when it is due, or (ii) interest on this Agreement, or any other amount payable under this Agreement, as and when due and payable within five (5) days of when it is due.

(b) Any representation or warranty made or deemed made by Borrowers in this Agreement or by Borrowers or any Third Party in any DIP Loan Document to which it is a party, or in any certificate, document, opinion or financial or other statement furnished under or in connection with a DIP Loan Document, shall prove to have been incorrect in any negative material respect on or after the date hereof.

(c) Borrowers or any Third Party shall fail to perform or observe any material term, covenant or agreement contained in any DIP Loan Document on its part to be performed or observed, and fails to cure said Event of Default within five (5) days after occurrence of a monetary default and thirty (30) days after occurrence of a non-monetary Event of Default.

(d) Borrowers or any Third Party is involved in a proceeding which would reasonably be expected to result in a forfeiture of all or a substantial part of any such party's assets or a material judgment is entered against Borrowers or any Third Party.

(e) Any Lien or security interest purported to be created by any DIP Loan Document or DIP Financing Order shall cease to be, or shall be asserted by Borrowers not to be, a valid, perfected, first-priority (except as otherwise expressly provided in such DIP Loan Document or any DIP Financing Order) security interest in the assets or properties covered thereby.

(f) Any of the following shall occur in any Chapter 11 Case:

(i) any Borrower shall file a plan of reorganization or liquidation under Chapter 11 of the Bankruptcy Code that does not propose to indefeasibly repay the Obligations in full in cash, unless otherwise consented to by DIP Lender;

(ii) any Borrower shall file a pleading seeking to vacate or modify any of the DIP Financing Order without the prior written consent of DIP Lender;

(iii) entry of an order without the prior consent of DIP Lender amending, supplementing or otherwise modifying any DIP Financing Order;

(iv) reversal, vacation or stay of the effectiveness of any DIP Financing Order;

(v) any violation of the terms of any DIP Financing Order;

(vi) dismissal of any Chapter 11 Case or conversion of any Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code without the written consent of the DIP Lender;

(vii) appointment of a Chapter 11 trustee in any Chapter 11 Case without the consent of the DIP Lender;

(viii) any Borrower shall seek to sell any of its assets outside the ordinary course of business without the DIP's prior written consent;

(ix) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Borrower without the prior written consent of DIP Lender;

(x) granting of relief from the automatic stay in the Chapter 11 Case to permit foreclosure or enforcement on, or any right or remedy with respect to, material assets of any Borrower;

(xi) any Borrower shall file (or support another party in the filing of) a motion seeking entry of, or the entry of an order, granting any superpriority claim or Lien (except as contemplated herein) which is senior to or pari passu with DIP Lender's claims and Liens under the DIP Facility, other than the Carve-Out;

(xii) payment of or granting adequate protection with respect to prepetition debt, other than as expressly provided herein or in the DIP Financing Orders;

(xiii) unless otherwise provided in the Interim Order or the Final Order, or upon the written permission of DIP Lender, any Borrower shall seek or if there is entered, an order under Section 365 of the Bankruptcy Code rejecting a material lease that is part of (or whose premises contain any of) the Collateral;

(xv) cessation of the Liens of DIP Lender to be valid, perfected and enforceable in all respects in accordance with the DIP Financing Orders; or

(xvi) the entry by the Bankruptcy Court of an order terminating any Borrower's right to use the cash collateral.

(g) Borrowers shall use cash collateral or Loan proceeds for any item other than those set forth in, and in accordance with, the Budget and as approved by the Bankruptcy Court or prepay any pre-petition debt except as approved by the Bankruptcy Court and DIP Lender.

(h) Borrowers shall fail to comply with any milestone set forth this paragraph 9(h), as follows (i) fail to deliver to DIP Lender a proposed Disclosure Statement and Plan not later than ___ days after the Petition Date, (ii) fail to file with the Bankruptcy Court a Disclosure Statement and Plan in a form and substance reasonably satisfactory to DIP Lender not later than _____ days after the Petition Date, (iii) fail to obtain an Order of the Bankruptcy Court approving the Disclosure Statement and solicitation of approval of the Plan in a form and substance reasonably satisfactory to DIP Lender not later than _____ days after the Petition Date, and (iv) fail to obtain an Order of the Bankruptcy Court confirming the Plan in a form and substance reasonably satisfactory to DIP Lender, and (v) fail to meet any other deadlines or requirements set forth in Sections 9, 10 and 11 of this Agreement, without the written consent of DIP Lender to deviate from these requirements.

(i) Borrowers fail to enter into an Asset Purchase Agreement in conjunction with a Plan and to effectuate the sale of Debtors' Collateral to DIP Lender as part of the Plan not later than 15 days after confirmation of a Plan.

THEN, DIP Lender may deliver written notice to the Bankruptcy Court that the automatic stay provisions of Section 362 of the Bankruptcy Code have been vacated and modified to the extent necessary to permit DIP Lender to exercise all rights and remedies provided for in the DIP Loan Documents, and after five (5) business days after such notice, to take, subject to the provisions of the DIP Financing Order, any or all of the following actions without further order of or application to the Bankruptcy Court (as applicable):

(a) declare the Commitment terminated whereupon the Commitment shall be immediately terminated;

(b) declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations of any and every kind owing by Borrowers to DIP Lender hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrowers;

(c) enforce any and all rights against the Collateral in the possession of DIP Lender, including, without limitation, disposition of the Collateral reasonably for application towards the Obligations; and/or

(d) take any other actions or exercise any other rights or remedies permitted under the DIP Financing Order, the DIP Loan Documents or applicable Law to effectuate the repayment of the Obligations.

Borrowers shall cooperate fully with DIP Lender in its exercise of rights and remedies, whether against the Collateral or otherwise. Each Borrower hereby waives 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 DIP Lender set forth in the DIP Financing Order and in the DIP Loan Documents.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other DIP Loan Document shall have been breached by Borrowers, and not cured within any applicable notice and cure period, then DIP Lender may proceed to protect and enforce DIP Lender's rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other DIP Loan Document. Without limitation of the foregoing, Borrowers agree that failure to materially comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. DIP Lender acting pursuant to this paragraph shall be jointly and severally indemnified by Borrowers against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses).

11. Certain Bankruptcy Matters.

(a) Except to the extent provided otherwise in a DIP Financing Order, Borrowers hereby agree that the Obligations shall (i) constitute Superpriority DIP Claims over all administrative expense claims and unsecured claims against Borrowers now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court, subject only to Carve-Out and (ii) be secured pursuant to Sections 364(c)(2) and (c)(3) of the Bankruptcy Code and, to the extent provided in any of the DIP Financing Order, shall not be subject to any claims against the Collateral pursuant to Section 506(c) of the Bankruptcy Code, subject only to the Carve-Out.

(b) In the event of a conflict between, or inconsistency among, the Interim Order or the Final Order, on the one hand, and any other DIP Loan Document, on the other hand, the Interim Order or the Final Order, as the case may be, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) DIP Lender shall not be required to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the DIP Financing Order or any other DIP Loan Document. If DIP Lender shall, in its sole discretion, from time to time elect to prepare, file, register or publish any such financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of DIP Lender's Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that the Interim Order is entered, and (B) shall not negate or impair the validity or effectiveness of this Section or of the perfection of any other Liens in favor of DIP Lender on the Collateral.

(ii) Except as otherwise agreed to by DIP Lender, the Liens, lien priorities, Superpriority DIP Claims and other rights and remedies granted to DIP Lender pursuant to this Agreement, the DIP Financing Order or the other DIP Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the Superpriority DIP Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by Borrowers (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of any of the Chapter 11 Case, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except to the extent provided in any of the DIP Financing Orders and subject to the DIP Financing Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Case or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of DIP Lender against Borrowers in respect of any Obligations, but subject to the Carve-Out;

(ii) other than as provided in the DIP Financing Order or the DIP Loan Documents, DIP Lender's Liens on the Collateral shall constitute valid, enforceable and perfected first priority Liens, and shall be prior to all other Liens, now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) DIP Lender's Liens on the Collateral shall continue to be valid, enforceable, and perfected without the need for DIP Lender to prepare, file, register, or publish any

financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments, or to otherwise perfect DIP Lender's Liens under applicable non-bankruptcy Law.

(iv) upon the later of (A) the occurrence of an Event of Default and (B) the Maturity Date, DIP Lender shall be required to advance funds to the Debtor's estate in an amount sufficient to pay all accrued but unpaid administrative claims incurred in the ordinary course of the Debtor's business in accordance with the terms of the Approved Budget (subject to any Permitted Variance) arising in the time period between the effective date of the DIP Facility through the Maturity Date; provided, however, that the payment of such obligations in this Section 11(d)(iv) shall be in addition to the Carve-Out."

(e) In connection with any sale of all or any portion of the Collateral, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part of restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by DIP Lender, in accordance with applicable Law, DIP Lender "credit bid" the full amount of all Obligations in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral. In connection with the foregoing, DIP Lender shall have the right to assign its right to purchase all or any portion of Borrowers' assets in connection with any such "credit bid" to a newly-formed acquisition vehicle or affiliate.

12. Grant of Security.

(a) To secure the Obligations, effective immediately upon entry of the Interim Order, pursuant to Sections 361, 362, 364(c)(2) and 364(c)(3) and 364(d) of the Bankruptcy Code, DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected post-petition priming Lien and security interests in and liens on all Collateral, including priority over the Pre-Petition Secured Debt, as of the Petition Date, subject only to DIP Lender Carve-Out.

(b) To the extent permitted by applicable Law, Borrowers hereby irrevocably authorize DIP Lender and its affiliates, counsel and other representatives, at any time and from time to time, to file in the name of Borrowers or otherwise and without separate authorization or authentication of Borrowers appearing thereon, such UCC financing statements or continuation statements as DIP Lender may reasonably deem necessary or reasonably appropriate to further perfect or maintain the perfection of the Lien of DIP Lender under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby "all of the debtor's personal property and assets" or words to similar effect, whether now owned or hereafter acquired, notwithstanding that such description may be broader in scope than the Collateral described in this Agreement. Borrowers hereby also authorizes DIP Lender and its affiliates, counsel and other representatives, at any time and from time to time, to execute and file any and all agreements, instruments, documents and papers as DIP Lender may reasonably request to evidence the Lien of DIP Lender in any patent, trademark, copyright or other intellectual property, including without limitation the goodwill or accounts and general intangibles of Borrowers relating thereto or represented thereby. Borrowers agree that, except to the extent that any filing office requires otherwise, a carbon, photographic, photo static or other

reproduction of this Agreement or of a financing statement is sufficient as a financing statement. Borrowers shall pay the costs of, or incidental to, any recording or filing of any financing or continuation statements or other assignment documents concerning the Collateral.

(c) Each Borrower will promptly deliver each instrument and any other document, and take any other action, that may be reasonably requested by DIP Lender in order to perfect DIP Lender's Lien in the Collateral, all at the reasonable cost and expense of Borrowers.

13. Expenses. Borrowers agree to reimburse DIP Lender on demand for all reasonable costs, expenses and charges (including, without limitation, reasonable fees and charges of counsel) in connection with the preparation or modification of the DIP Loan Documents, performance or enforcement of the DIP Loan Documents, or the defense or prosecution of any rights of DIP Lender pursuant to any DIP Loan Documents.

14. CONSENT TO JURISDICTION. BORROWERS HEREBY CONSENT TO THE JURISDICTION OF THE BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS AND IRREVOCABLY AGREE THAT, SUBJECT TO DIP LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. BORROWERS EXPRESSLY SUBMIT AND CONSENT TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVE ANY DEFENSE OF FORUM NON CONVENIENS. BORROWERS HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWERS BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWERS, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. IN ANY LITIGATION, TRIAL, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING RELATING TO THIS AGREEMENT OR ANY OF THE OTHER DIP LOAN DOCUMENTS, ALL DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF BORROWERS OR ANY OF THEIR AFFILIATES SHALL BE DEEMED TO BE EMPLOYEES OR MANAGING AGENTS OF BORROWERS FOR PURPOSES OF ALL APPLICABLE LAW OR COURT RULES REGARDING THE PRODUCTION OF WITNESSES BY NOTICE FOR TESTIMONY (WHETHER IN A DEPOSITION, AT TRIAL OR OTHERWISE). BORROWERS AGREE THAT DIP LENDER'S COUNSEL IN ANY SUCH DISPUTE RESOLUTION PROCEEDING MAY EXAMINE ANY OF THESE INDIVIDUALS AS IF UNDER CROSS-EXAMINATION AND THAT ANY DISCOVERY DEPOSITION OF ANY OF THEM MAY BE USED IN THAT PROCEEDING AS IF IT WERE AN EVIDENCE DEPOSITION. BORROWERS IN ANY EVENT WILL USE ALL COMMERCIALY REASONABLE EFFORTS TO PRODUCE IN ANY SUCH DISPUTE RESOLUTION PROCEEDING, AT THE TIME AND IN THE MANNER REQUESTED BY DIP LENDER, ALL PERSONS, DOCUMENTS (WHETHER IN TANGIBLE, ELECTRONIC OR OTHER FORM) OR OTHER THINGS UNDER THEIR CONTROL AND RELATING TO THE DISPUTE.

15. WAIVER OF JURY TRIAL.

EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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.

16. Miscellaneous.

(a) The provisions of this Agreement are intended to be severable. If for any reason any provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

(b) No amendment, modification, supplement or waiver of any provision of this Agreement nor consent to departure by Borrowers therefrom shall be effective unless the same shall be in writing and signed by Borrowers and DIP Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of DIP Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by Law.

(d) As used herein, the term Borrowers shall include all signatories hereto in such capacity, if more than one. In such event, the obligations, representations and warranties of Borrowers hereunder shall be joint and several. This Agreement shall be binding on Borrowers and their respective successors and assigns and shall inure to the benefit of DIP Lender and its successors and assigns, except that Borrowers may not delegate any of their obligations hereunder without the prior written consent of DIP Lender. With the consent of Borrowers, not to be unreasonably withheld, DIP Lender may assign all or a portion of its rights and obligations under this Agreement; provided that such consent shall not be required (i) at any time that an Event of Default has occurred and is continuing, (ii) in connection with any assignment to an affiliate of DIP Lender, or (iii) in connection with any merger or consolidation.

(e) Anything herein to the contrary notwithstanding, the obligations of Borrowers under this Agreement shall be subject to the limitation that payments of interest shall not be required to the

extent that receipt thereof would be contrary to provisions of Law applicable to DIP Lender limiting rates of interest which may be charged or collected by DIP Lender.

(f) Unless otherwise agreed in writing, notices shall be given to DIP Lender and Borrowers at its address set forth in the signature page of this Agreement, or such other address communicated in writing by either such party to the other. Notices to DIP Lender shall be effective upon receipt.

(g) The obligations of Borrowers under Sections 7, 13, 14 and 15 hereof shall survive the repayment of the Loans.

(h) Each reference herein to DIP Lender shall be deemed to include its successors, endorsees, and assigns, in whose favor the provisions hereof shall inure. Each reference herein to Borrowers shall be deemed to include the respective heirs, executors, administrators, legal representatives, successors and assigns of Borrowers, all of whom shall be bound by the provisions hereof.

17. GOVERNING LAW: THIS AGREEMENT SHALL BE CONSTRUED, PERFORMED, AND ENFORCED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF), EXCEPT TO THE EXTENT THAT THE LAWS OF SUCH STATE ARE SUPERSEDED BY THE BANKRUPTCY CODE OR OTHER APPLICABLE FEDERAL LAW.

The remainder of this page is intentionally blank.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first written above.

BORROWERS:

DEPENDABLE AUTO SHIPPERS, INC.

DAS GLOBAL SERVICES, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DAS Government Services, LLC

By: _____
Name: _____
Title: _____

**Contact Information for Notices
to Borrowers:**

With a Copy to:

Email: _____
Facsimile: _____

Email: _____
Facsimile: _____

DIP LENDER:

ADESA, INC.

By: _____

Name: _____

Title: _____

Contact Information for Notices to DIP Lender:

ADESA, Inc.
13085 Hamilton Crossing Boulevard
Suite 500
Carmel, IN 46032
Email: _____
Facsimile: _____

With a Copy to:

Email: _____

Facsimile: _____

Exhibit A

Form of Borrowing Request

[Date]

ADESA, Inc.
13085 Hamilton Crossing Boulevard
Suite 500
Carmel, IN 46032

Ladies and Gentlemen:

Reference is made to that certain SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION PRIMING LOAN AGREEMENT (the "Loan Agreement") dated as of December ____, 2016 by and among Dependable Auto Shippers, Inc., a Texas corporation, DAS Global Services, Inc., a Texas corporation, and DAS Government Services, LLC, a Delaware limited liability company, each of which is for profit and will become a debtor-in-possession under the Bankruptcy Code (as defined below) ("Borrowers"), and ADESA, Inc., an Indiana corporation, as lender (the "DIP Lender"). Terms defined in the Loan Agreement are used herein with the same meanings. This notice constitutes a Borrowing Request, and the Chief Financial Officer, on behalf of Borrowers, hereby requests a Loan under the Loan Agreement and in that connection the Chief Financial Officer specifies the following information with respect to the Loan requested hereby:

- (A) Aggregate principal amount of Loan¹: _____
- (B) Date of Loan (which is a Business Day): _____
- (C) Location and number of the applicable Borrowers' account to which proceeds of the Loan are to be disbursed: _____
- (D) Purpose of the Loan and use of proceeds therefrom:

¹ Not less than \$25,000

The Chief Financial Officer hereby represents and warrants that the conditions specified in paragraphs (c) through (k) of Section 6 of the Loan Agreement are satisfied as of the date hereof.

Very truly yours,

Dependable Auto Shippers, Inc.
DAS Global Services, Inc.
DAS Government Services, LLC

By: _____
Name:
Title: Chief Financial Officer

Exhibit B

Initial Approved Budget

See Attached.

Exhibit C

Milestones

See Attached.

EXHIBIT B

APPROVED BUDGET

Operation Cash Flow		12/18/2016	12/25/2016	1/1/2017	1/8/2017	1/15/2017
Week Number	Rev Per Unit	1	2	3	4	5
Cash In						
Consumer Units Based on Pickup Date	\$1,050	75	50	100	100	100
Consmer Cash	Amex Merchan	\$59,063	\$39,375	\$78,750	\$78,750	\$105,000
Corporate Units Based on Delivery	\$1,250	40	50	35	40	40
Corporate Cash		\$50,000	\$62,500	\$43,750	\$50,000	\$50,000
Total Units		115	100	135	140	140
Total Cash from Revenue		\$109,063	\$101,875	\$122,500	\$128,750	\$155,000
Triumph Truck Deposit				\$100,000		
Credit Card Reserve						
Insurance Refund						
Total Cash In		\$109,063	\$101,875	\$222,500	\$128,750	\$155,000
Cash Out						
	Cost Per Unit					
Attorney Fees (Debtors Counsel)		\$19,231	\$19,231	\$19,231	\$19,231	\$19,231
Notification Fees		\$1,111	\$1,111	\$1,111	\$1,111	\$1,111
Tax Accountant		\$0	\$0	\$0	\$0	\$0
US Trustee Fees*		\$0	\$0	\$0	\$1,000	\$0
Consumer COGS (Transportation and Terminals - Estimated)	\$850	\$63,750	\$42,500	\$85,000	\$85,000	\$85,000
Corporate COGS (Transportation and Terminals - Estimated)	\$950	\$38,000	\$47,500	\$33,250	\$38,000	\$38,000
Recovery (Estimated)	3%	\$3,272	\$3,056	\$3,675	\$3,863	\$4,650
Credit Card Fees (Estimated)	2%	\$1,181	\$788	\$1,575	\$1,575	\$2,100
Advertising		\$5,615	\$5,615	\$5,615	\$5,615	\$5,615
Benefits (Insurance)		\$6,958	\$6,958	\$6,958	\$6,958	\$6,958
Corporate Council (Subject to Approval)		\$1,154	\$1,154	\$1,154	\$1,154	\$1,154
Consulting (Development and SEO)		\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Google Docs		\$115	\$115	\$115	\$115	\$115
Insurance-First Insurance Fund		\$692	\$692	\$692	\$692	\$692
Other		\$231	\$231	\$231	\$231	\$231
Payroll (noninsider employees)		\$15,811	\$15,811	\$15,811	\$15,811	\$15,811
Payroll - Higgins, Tim		\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82
Payroll - Roehll, John		\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66
Rent		\$3,462	\$3,462	\$3,462	\$3,462	\$3,462
Taxes (payroll)		\$8,615	\$8,615	\$8,615	\$8,615	\$8,615
Travel		\$0	\$0	\$5,000	\$5,000	\$5,000
Utilities		\$4,044	\$4,044	\$4,044	\$4,044	\$4,044
Insurance (As approved by the Court)		\$0	\$23,000	\$0	\$0	\$0
Taxes (As Approved by the Court)		\$0	\$0	\$0	\$25,000	\$0
Critical Vendor Pmts (As Approved by		\$0	\$400,000	\$0	\$385,893	\$0
Salaries and Expense (As Approved by		\$0	\$26,013	\$0	\$0	\$0
Bond Payment (As approved by the		\$0	\$0	\$0	\$75,000	\$0
Total Cash Out		\$185,787	\$622,441	\$208,084	\$699,915	\$214,334
Cash Balance		-\$76,725	-\$520,566	\$14,416	-\$571,165	-\$59,334

*Regardless of line item in the Budget, U.S. Trustee fees will be paid as required by statute.

Operation Cash Flow	1/22/2017	1/29/2017	2/5/2017	2/12/2017	2/19/2017	2/26/2017	3/5/2017
Week Number	6	7	8	9	10	11	12
Cash In							
Consumer Units Based on Pickup Date	100	150	150	200	200	250	250
Consumer Cash	\$105,000	\$157,500	\$157,500	\$210,000	\$210,000	\$262,500	\$262,500
Corporate Units Based on Delivery	40	40	75	75	100	100	100
Corporate Cash	\$50,000	\$50,000	\$93,750	\$93,750	\$125,000	\$125,000	\$125,000
Total Units	140	190	225	275	300	350	350
Total Cash from Revenue	\$155,000	\$207,500	\$251,250	\$303,750	\$335,000	\$387,500	\$387,500
Triumph Truck Deposit							
Credit Card Reserve							
Insurance Refund	\$50,000						
Total Cash In	\$205,000	\$207,500	\$251,250	\$303,750	\$335,000	\$387,500	\$387,500
Cash Out							
Attorney Fees (Debtors Counsel)	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231
Notification Fees	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111
Tax Accountant	\$0	\$0	\$0	\$20,000	\$0	\$0	\$0
US Trustee Fees*	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Consumer COGS (Transportation and Terminals - Estimated)	\$85,000	\$127,500	\$127,500	\$170,000	\$170,000	\$212,500	\$212,500
Corporate COGS (Transportation and Terminals - Estimated)	\$38,000	\$38,000	\$71,250	\$71,250	\$95,000	\$95,000	\$95,000
Recovery (Estimated)	\$4,650	\$6,225	\$7,538	\$9,113	\$10,050	\$11,625	\$11,625
Credit Card Fees (Estimated)	\$2,100	\$3,150	\$3,150	\$4,200	\$4,200	\$5,250	\$5,250
Advertising	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615
Benefits (Insurance)	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958
Corporate Council (Subject to Approval)	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154
Consulting (Development and SEO)	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Google Docs	\$115	\$115	\$115	\$115	\$115	\$115	\$115
Insurance-First Insurance Fund	\$692	\$692	\$692	\$692	\$692	\$692	\$692
Other	\$231	\$231	\$231	\$231	\$231	\$231	\$231
Payroll (noninsider employees)	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811
Payroll - Higgins, Tim	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82
Payroll - Roehll, John	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66
Rent	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462
Taxes (payroll)	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615
Travel	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Utilities	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044
Insurance (As approved by the Court)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxes (As Approved by the Court)	\$111,000	\$0	\$0	\$0	\$0	\$0	\$0
Critical Vendor Pmts (As Approved by	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Salaries and Expense (As Approved by	\$0	\$25,000	\$0	\$0	\$0	\$0	\$0
Bond Payment (As approved by the	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Cash Out	\$325,334	\$284,459	\$294,022	\$359,147	\$363,834	\$408,959	\$408,959
Cash Balance	-\$120,334	-\$76,959	-\$42,772	-\$55,397	-\$28,834	-\$21,459	-\$21,459

*Regardless of line item in the Budget, U.S. Trustee fees will be paid as required by statute.

Operation Cash Flow	3/12/2017	3/19/2017	3/26/2017	4/2/2017	4/9/2017	4/16/2017	4/23/2017
Week Number	13	14	15	16	17	18	19
Cash In							
Consumer Units Based on Pickup Date	250	250	250	250	250	250	250
Consumer Cash	\$262,500	\$262,500	\$262,500	\$262,500	\$262,500	\$262,500	\$262,500
Corporate Units Based on Delivery	100	100	100	100	100	100	100
Corporate Cash	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000
Total Units	350	350	350	350	350	350	350
Total Cash from Revenue	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500
Triumph Truck Deposit							
Credit Card Reserve							
Insurance Refund							
Total Cash In	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500	\$387,500
Cash Out							
Attorney Fees (Debtors Counsel)	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231	\$19,231
Notification Fees	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111	\$1,111
Tax Accountant	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0
US Trustee Fees*	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Consumer COGS (Transportation and Terminals - Estimated)	\$212,500	\$212,500	\$212,500	\$212,500	\$212,500	\$212,500	\$212,500
Corporate COGS (Transportation and Terminals - Estimated)	\$95,000	\$95,000	\$95,000	\$95,000	\$95,000	\$95,000	\$95,000
Recovery (Estimated)	\$11,625	\$11,625	\$11,625	\$11,625	\$11,625	\$11,625	\$11,625
Credit Card Fees (Estimated)	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250
Advertising	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615	\$5,615
Benefits (Insurance)	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958	\$6,958
Corporate Council (Subject to Approval)	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154	\$1,154
Consulting (Development and SEO)	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Google Docs	\$115	\$115	\$115	\$115	\$115	\$115	\$115
Insurance-First Insurance Fund	\$692	\$692	\$692	\$692	\$692	\$692	\$692
Other	\$231	\$231	\$231	\$231	\$231	\$231	\$231
Payroll (noninsider employees)	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811	\$15,811
Payroll - Higgins, Tim	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82	\$3,836.82
Payroll - Roehll, John	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66	\$3,707.66
Rent	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462	\$3,462
Taxes (payroll)	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615	\$8,615
Travel	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Utilities	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044	\$4,044
Insurance (As approved by the Court)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxes (As Approved by the Court)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Critical Vendor Pmts (As Approved by	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Salaries and Expense (As Approved by	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Bond Payment (As approved by the	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Cash Out	\$408,959	\$408,959	\$428,959	\$408,959	\$408,959	\$408,959	\$408,959
Cash Balance	-\$21,459	-\$21,459	-\$41,459	-\$21,459	-\$21,459	-\$21,459	-\$21,459

*Regardless of line item in the Budget, U.S. Trustee fees will be paid as required by statute.

Operation Cash Flow	4/30/2017	
Week Number	20	
Cash In		
Consumer Units Based on Pickup Date	250	3,725
Consumer Cash	\$262,500	\$3,825,937.50
Corporate Units Based on Delivery	100	1,535
Corporate Cash	\$125,000	\$1,918,750.00
Total Units	350	5,260
Total Cash from Revenue	\$387,500	\$5,744,687.50
Triumph Truck Deposit		\$100,000.00
Credit Card Reserve	\$75,000	\$75,000.00
Insurance Refund		\$50,000.00
Total Cash In	\$462,500	\$5,969,687.50
Cash Out		
Attorney Fees (Debtors Counsel)	\$19,231	\$384,620.00
Notification Fees	\$1,111	\$22,222.22
Tax Accountant	\$0	\$40,000.00
US Trustee Fees*	\$13,000	\$14,000.00
Consumer COGS (Transportation and Terminals - Estimated)	\$212,500	\$3,166,250.00
Corporate COGS (Transportation and Terminals - Estimated)	\$95,000	\$1,458,250.00
Recovery (Estimated)	\$11,625	\$172,340.63
Credit Card Fees (Estimated)	\$5,250	\$76,519
Advertising	\$5,615	\$112,307.69
Benefits (Insurance)	\$6,958	\$139,150.02
Corporate Council (Subject to Approval)	\$1,154	\$23,076.92
Consulting (Development and SEO)	\$5,000	\$100,000.00
Google Docs	\$115	\$2,307.69
Insurance-First Insurance Fund	\$692	\$13,846.15
Other	\$231	\$4,615.38
Payroll (noninsider employees)	\$15,811	\$316,226.30
Payroll - Higgins, Tim	\$3,836.82	\$76,736.40
Payroll - Roehll, John	\$3,707.66	\$74,153.10
Rent	\$3,462	\$69,230.77
Taxes (payroll)	\$8,615	\$172,307.69
Travel	\$5,000	\$90,000.00
Utilities	\$4,044	\$80,884.62
Insurance (As approved by the Court)	\$0	\$23,000.00
Taxes (As Approved by the Court)	\$167,000	\$303,000.00
Critical Vendor Pmts (As Approved by	\$0	\$785,893.42
Salaries and Expense (As Approved by	\$103,513	\$154,526.00
Bond Payment (As approved by the	\$0	\$75,000.00
		\$0.00
		\$0.00
Total Cash Out	\$692,473	\$7,950,463.76
Cash Balance	-\$229,973	-\$1,980,776

*Regardless of line item in the Budget, U.S. Trustee fees will be paid as required by statute.