

Interim Hearing Date: February 28, 2012 at 10:00 a.m. (ET)

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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

GLOBAL AVIATION HOLDINGS INC., *et al.*,

Case Nos. 12-40783 (CEC)
12-40782 (CEC)
12-40784 (CEC)
12-40785 (CEC)
12-40786 (CEC)
12-40787 (CEC)
12-40788 (CEC)
12-40789 (CEC)
12-40790 (CEC)

Debtors.

Jointly Administered

**NOTICE OF FILING OF DEBTORS' MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO OBTAIN POSTPETITION FINANCING AND TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,
(III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on February 24, 2012, Global Aviation Holdings Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), filed



the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing and to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Scheduling A Final Hearing, and (IV) Granting Related Relief (the "**Motion**") with the United States Bankruptcy Court for the Eastern District of New York (the "**Court**").

PLEASE TAKE FURTHER NOTICE THAT an interim hearing to consider such Motion will be held before the Honorable Chief Judge Carla E. Craig of the United States Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Courtroom 3529, Brooklyn, New York 11201 on **February 28, 2012 at 10:00 a.m. prevailing Eastern Time** (the "**Interim Hearing**").

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Eastern District of New York and shall be filed with the Court electronically by registered users of the Court's case filing system, and by all other parties in interest, on a 3.5 inch floppy disk, compact disc or flash drive (preferably in Portable Document Format (PDF), Microsoft Word, or any other Windows-based word processing format) with a hard copy delivered directly to the chambers of the Honorable Chief Judge Carla E. Craig and shall be served so as to be actually received by no later than the date and time to be determined at the Interim Hearing by the following parties: (a) the Debtors, 101 World Drive, Peachtree City, Georgia 30269, Attn.: Brian Gillman, Esq.; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher T. Greco, Esq.; (c) counsel to the statutory committee of unsecured creditors, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn.: Sharon L. Levine, Esq.; (d) the

indenture trustee for the first lien noteholders, Wells Fargo Bank, National Association, 7000 Central Parkway, Suite 550, Atlanta, Georgia 30328, Attn.: Corporate Trust Services; (e) counsel to the ad hoc committee of first lien noteholders, Latham & Watkins LLP, 885 Third Avenue, New York NY 10022, Attn.: Mark A. Broude, Esq.; (f) counsel to the holder of the second lien term loan, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn.: Joshua A. Feltman, Esq.; (g) counsel to the prepetition equity holders, MatlinPatterson Global Advisors LLC, 520 Madison Avenue, New York, New York 10022, Attn: Raph Posner, Esq.; (h) the International Brotherhood of Teamsters, 2351 Sunset Blvd., Suite 170-709, Rocklin, California 95765, Attn.: Gary Goodpaster and 110 Wall Street, 3rd Floor, New York, New York 10005, Attn: Cynthia De Figueiredo; (i) the Airline Pilots Association, 1625 Massachusetts Avenue NW, Washington, DC 20036, Attn.: Office of the General Counsel; (j) Transport Workers Union of America, AFL-CIO Local 540, 2054 Village Park Drive, Peachtree City, Georgia 30269, Attn: Joseph Papian, (k) the United States Trustee for Region 2, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn.: Andrea B. Schwartz, Esq. and 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201, Attn.: Alicia Leonhard, Esq.; and (l) those persons who have formally appeared and requested service in these cases pursuant to Rule 2002 of the Federal Rule of Bankruptcy Procedure.

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Brooklyn, New York
Dated: February 24, 2012

/s/ Jonathan S. Henes, P.C.

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INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO OBTAIN POSTPETITION FINANCING AND TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,
(III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

Global Aviation Holdings Inc. (“*Global Aviation*”) and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), respectfully represent:

Introduction¹

1. As the Court is aware, at the first day hearing, the Debtors obtained interim approval to use Cash Collateral to operate their businesses. This use of Cash Collateral was to act as a bridge to securing post-petition financing which, once secured, would enable the Debtors to operate their businesses and prosecute these chapter 11 cases. In that regard, the Debtors engaged in negotiations with a group of their prepetition first lien secured lenders — holding approximately 70 percent of the first lien notes — regarding postpetition financing and, through their financial advisors, explored the availability of financing from other third parties.

2. The Debtors and the group of first lien lenders have agreed on the terms of a postpetition financing facility that will satisfy the Debtors’ short term liquidity needs and enable the Debtors to fund these chapter 11 cases. The Debtors believe that the terms of the proposed postpetition financing are the best available under the circumstances and will facilitate their preservation of estate assets, thereby maximizing recovery for creditors. In light of the considerable benefits that the DIP Facility provides, including continued consensual use of Cash Collateral and an infusion of needed liquidity, authorization to enter into the DIP Facility is in the best interests of the Debtors’ estates.

3. As set forth in the Snyder Declaration, the Debtors require immediate access to the DIP Facility on an interim basis. Indeed, the Debtors and their advisors estimate, based on a careful review of the Debtors’ books and records, that absent access to the DIP Facility, the

¹ Terms used but not defined in this Introduction shall be deemed to have the meanings given to them in this motion. All other capitalized terms used but not defined in the motion shall have the meanings given to them in the interim order, substantially in the form attached hereto as **Exhibit A** (the “*Interim Order*”).

Debtors will experience dangerously low liquidity levels, which would place their business and assets at risk. Accordingly, the Debtors believe that approval of the DIP Facility on an interim basis is warranted and necessary.

Background

General Background

4. The Debtors are leading providers of customized military, cargo, passenger and commercial charter global air transportation services. Notably, the Debtors are the largest commercial provider of air transportation for the United States Military. The Debtors operate their businesses through their two airlines: World Airways, based in Peachtree City, Georgia, and North American Airlines, based at JFK International Airport in Jamaica, Queens. The Debtors operate a diverse fleet of cargo and passenger aircraft, employ approximately 1,800 employees and have annual revenues of more than \$1 billion.

5. Recently, notwithstanding its industry leading position, the Debtors have encountered various financial and operational hurdles, due in part to a decreased demand for military cargo and passenger services. In an effort to facilitate a comprehensive restructuring of the Debtors' businesses, on February 5, 2012 (the "***Commencement Date***"), each of the Debtors commenced cases under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases are consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

6. On February 6, 2012, the Court entered the *Interim Order Approving Debtors' Motion for Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, (III) Scheduling Further Hearings, and (IV) Granting Related*

Relief [Docket No. 32] (the “**Interim Cash Collateral Order**”), approving the Debtors’ interim use of cash collateral. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On February 13, 2012, the United States Trustee for Region 2 (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors (the “**Creditors’ Committee**”) and issued the *Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 65].

7. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of William A. Garrett, Executive Vice President and Chief Financial Officer of Global Aviation Holdings Inc., in Support of First Day Pleadings* (the “**First Day Declaration**”) [Docket No. 3] and the *Declaration of Todd R. Snyder, Senior Managing Director of Rothschild Inc., In Support Of Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing and to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (filed on or around the date hereof, the “**Snyder Declaration**”).

Summary of the Debtors’ Prepetition Secured Indebtedness

8. As of the Commencement Date, the Debtors have prepetition secured obligations consisting primarily of: (a) approximately \$156.2 million plus any additional fees and expenses outstanding under certain 14% senior secured notes due August 2013 (the “**Senior Secured Notes**”); (b) approximately \$86.8 million plus any accrued and unpaid interest and any additional fees and expenses outstanding under a second lien term loan due September 2014 (the “**Second Lien Term Loan**”); and (c) \$251,000 outstanding under a capital lease facility.

9. The trustee, administrative and collateral agents under the Senior Secured Notes and the Second Lien Credit Agreement are party to an intercreditor agreement dated August 13, 2009 (as amended, supplemented or modified from time to time, the “*Intercreditor Agreement*”), which generally provides for the subordination of the claims and liens of the Second Lien Lenders under the Second Lien Credit Agreement to the claims and liens of the Senior Secured Lenders under the Senior Secured Notes.

Jurisdiction

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The bases for the relief requested herein are sections 105(a), 361, 362, 363(c), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code, Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 4001-5 of the Local Bankruptcy Rules for the Eastern District of New York (the “*Local Rules*”) and the *Guidelines for Financing Motions* set forth in Administrative Order No. 558 of the United States Bankruptcy Court for the Eastern District of New York (the “*Guidelines*”).

Relief Requested

13. By this motion, the Debtors request entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, and a final order to be submitted to the Court for approval prior to the final hearing on the motion (the “*Final Hearing*”), (a) authorizing the Debtors to enter into a senior secured superpriority debtor-in-possession facility in an aggregate principal amount of \$45 million (the “*DIP Facility*”), for which the Debtors seek immediate access to at least \$15 million on an interim basis; (b) replacing the existing Interim Cash Collateral Order

with the proposed Interim Order, thereby authorizing the Debtors to use Cash Collateral on a further interim basis; (c) granting certain adequate protection to the Pre-Petition Secured Parties in connection with the use of Cash Collateral and any diminution in the value of the Pre-Petition Secured Parties' interests in the Pre-Petition Collateral; and (d) approving the form and manner of notice and scheduling the Final Hearing.

Concise Statement Pursuant to Bankruptcy Rule 4001²

14. Pursuant to, and in accordance with, Bankruptcy Rule 4001(b), Local Rule 4001-5 and the Guidelines, the following is a concise statement of the material provisions of the Interim Order:³

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
<p><u>DIP Credit Agreement Parties</u> [Fed. R. Bankr. P. 4001(c)(1)(B)]</p>	<p><u>Debtor Parties:</u> <u>Borrower:</u> Global Aviation Holdings Inc. <u>Guarantors:</u> The Debtors other than Global Aviation Holdings Inc.</p> <p><u>Lending Parties:</u> <u>DIP Agent:</u> Cantor Fitzgerald Securities. <u>DIP Lenders:</u> IN-FP2 LLC, Guggenheim Investment Management, LLC, Beach Point Capital Management LP, Chatham Credit Management III, LLC (together with certain of their affiliates, the "<i>Senior Noteholder Group</i>").</p> <p>DIP Agmt. Preamble & Art. I.</p>
<p><u>Amounts</u> [Fed. R. Bankr. P. 4001(c)(1)(B)] [Guidelines § 1(a)]</p>	<p><u>DIP Facility.</u> \$45 million (no less than \$15 million on an interim basis). DIP Agmt. Art. I; Int. Ord. ¶ 2(c).</p> <p><u>Cash Collateral.</u> The Debtors seek to use Cash Collateral in accordance with the terms and conditions of the Interim Order and the Approved Budget. Under the proposed Interim Order, the Debtors seek authority to use all the Cash Collateral.</p>

² The terms of the DIP Facility described in this concise statement are the subject of ongoing discussions and negotiations between the parties. The Debtors will provide revised forms and blacklines of the Interim Order and DIP Credit Agreement reflecting any changes to the terms set forth herein or in the exhibits to this motion.

³ This concise statement is qualified in its entirety by reference to the applicable provisions of the DIP Loan Documents or the Interim Order, as applicable. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Loan Documents, the provisions of the DIP Loan Documents shall control and the Interim Order shall control over the DIP Credit Agreement. Any capitalized terms used but not defined in the concise statement shall have the meanings ascribed to such terms in the DIP Credit Agreement.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	Int. Ord. ¶¶ E, 3.
<p>Purpose</p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Fed. R. Bankr. P. 4001(b)(1)(B)(ii)]</p> <p>[Guidelines § 1(a)]</p>	<p>The Debtors have an immediate need to obtain loans under the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs, and to facilitate the orderly liquidation of the Debtors' businesses through one or more sales of substantially all of the Debtors' assets.</p> <p>DIP Agmt. § 3.21; Int. Ord. ¶ F.</p>
<p>Maturity & Termination</p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Fed. R. Bankr. P. 4001(b)(1)(B)(iii)]</p> <p>[Guidelines § 1(o)]</p>	<p>DIP. The Final Maturity Date is the earlier of (i) the date on which all Loans and Obligations have been repaid in full in cash, (ii) the date that occurs six months after the Closing Date; <i>provided</i> that such date may be extended by an additional two months, subject to the consent of more than 66.7% of the Lenders as of the date of such proposed extension, and (iii) the date of termination of the Commitments or acceleration of any Loans following the occurrence and during the continuance of an Event of Default in accordance with Section 8.01 of the DIP Credit Agreement.</p> <p>DIP Agmt. Art. I & § 2.07.</p> <p>The DIP Facility and use of Cash Collateral may, under certain circumstances, be restricted or terminated upon certain default events as discussed below.</p> <p>Int. Ord. ¶ 16(a).</p> <p>Cash Collateral. The Debtors are authorized, pursuant to section 363 of the Bankruptcy Code, to use the Cash Collateral for a period of time from the date hereof until the earliest to occur of (i) the termination of the commitments under the DIP Facility or the acceleration of the DIP Obligations as set forth in the DIP Credit Agreement, (ii) the date that the Interim Order ceases to be in full force and effect, (iii) immediately upon delivery of written notice to the Debtors and the Committee by the DIP Agent or its counsel of any breach or default by the Debtors of the terms and provisions of the Interim Order, which breach or default has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement; (iv) immediately upon delivery of written notice to the Debtors and the Committee by the DIP Agent or its counsel of an Event of Default under the DIP Credit Agreement, which Event of Default has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement; (v) the conversion of any of the Cases to a chapter 7 case; or (vi) appointment of a trustee or examiner with expanded powers.</p> <p>Int. Ord. ¶ 3.</p>
<p>Events of Default and Effect on Financing and Cash Collateral Availability</p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Guidelines § 1(o)]</p> <p>[Guidelines § 1(i)]</p> <p>[Guidelines § 1(p)]</p>	<p>Each of the following events shall constitute an event of default (unless waived in writing by the DIP Agent and the Required Lenders under the DIP Loan Documents), occurrence of which will allow the DIP Agent to, <i>inter alia</i>, (a) declare obligations under the DIP Facility due and payable, (b) terminate the DIP Facility and (c) make a declaration to the Committee and U.S. Trustee of a reduction or restriction on the Debtors' use of Cash Collateral:</p> <ul style="list-style-type: none"> • payment default; • materially false or misleading representation or warranty in documents provided in connection with the DIP Loan Documents; • failure to provide a Supplemental Budget that becomes an Approved Budget in accordance with the procedures set forth in Section 5.15 of the DIP Credit Agreement within three (3) Business Days of delivery of a Supplemental Budget;

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING

- breach of covenants and agreements set forth in Section 5.02(b) (delivery of compliance certificates) or Article VI (negative covenants) of the DIP Credit Agreement;
- breach of any other covenants that remains uncured for a period of 30 days after a Loan Party's receipt of a "Notice of Default" from the Administrative Agent or Required Lenders;
- any Loan Guarantee is held unenforceable or is disaffirmed;
- occurrence of certain "ERISA Events" resulting in expected liability to any Company and its ERISA Affiliates in excess of \$250,000;
- security interest or Lien ceases to be in full force and effect (other than as provided in the Collateral or DIP Credit Agreements) or is asserted by a Loan Party to not be valid, perfected and first priority;
- judicial declaration that any DIP Loan Document or material provisions is null and void or commencement of proceeding to establish such invalidity or repudiation by a Loan Party;
- motion adverse to interests of DIP Lenders and related parties under Loan Documents or Pre-Petition Note Documents;
- the filing of any plan or disclosure statement (or amendment thereto) by any Loan Party that does not provide for the repayment of cash in full of the DIP Obligations and, subject to the Final Order, the Roll-Up Notes;
- Interim Order (and Final Order, subsequent to its entry) or DIP Loan Documents ceases to be in effect or is reversed, stayed, amended, supplemented without consent of Administrative Agent and the Required Lenders;
- the Final Order is entered by the Bankruptcy Court on or before the entry of the Interim Order;
- appointment of chapter 11 trustee or receiver or examiner with expanded powers;
- filing of motion (or non-opposition of Loan Parties to such motion) permitting sale of the Debtors' assets that does not provide for payment of Secured Obligations in full and termination of Lenders' Commitment (unless applicable consent is obtained);
- dismissal or chapter 7 conversion of the Chapter 11 Cases (or any motion filed by a Loan Party seeking same);
- entry of order granting stay relief to enable execution on Collateral in excess of \$500,000;
- entry of order granting any other super-priority administrative or pari passu claim (other than order approving the Carve Out);
- termination of plan filing exclusivity;
- order invalidating, subordinating, disallowing, recharacterizing or limiting the enforceability, priority, characterization or validity of any of the Liens securing the First Lien Debt;
- any Collateral becoming subject to surcharge or marshalling;
- subject to the Final Order, allowance of any Section 506(c) claims;
- the Debtors propose or support of any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, on the effective date of such plan of reorganization or such sale, of all DIP Obligations;
- any other breach or default by any of the Debtors of the terms and provisions of the Interim Order;

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	DIP Agmt. Art. 8; Int. Ord. ¶ 15 & 16.
<p><u>Interest Rates</u></p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Guidelines § 1(c)]</p>	<p><u>Interest Rates.</u></p> <ul style="list-style-type: none"> • <u>ABR Loans.</u> Alternate Base Rate (floor of 3.0%) plus 9.00%. • <u>Eurodollar Loans.</u> Adjusted LIBOR Rate (floor of 2.0%) plus 10.00%. <p><u>Default Rate.</u> Non-default rate plus 2.0%.</p> <p>DIP Agmt. Art. I & § 2.06.</p>
<p><u>Fees</u></p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Guidelines § 1(c)]</p>	<p><u>Arranger Fees.</u> The Borrower agrees to pay, upon the entry of the Interim Order, to the Administrative Agent, for the account of Houlihan Lokey in its capacity as arranger a fee equal to 1.0% of the aggregate amount of the total Commitments in effect on the Closing Date (\$450,000).</p> <p><u>Upfront Fees.</u> The Borrower agrees to pay to the Administrative Agent for the account of each Lender an upfront fee equal to 2.0% of the stated principal amount of the sum of the aggregate Loans and Commitments as of the Closing Date, paid in kind to each Lender on a pro rata basis on the Closing Date.</p> <p><u>Administrative Agent Fees.</u> The Borrower agrees to pay to the Administrative Agent, for its own account, a structuring fee equal to \$50,000 and the administrative fees and expenses and such other fees and expenses payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.</p> <p><u>Commitment Fees.</u> The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee equal to (i) the average of the daily difference of (x) the total Commitments <i>minus</i> (y) the aggregate principal amount of all outstanding Loans <i>times</i> (ii) 0.50% per annum for the period from and including the Closing Date to the Final Maturity Date, payable monthly in arrears in cash on the last Business Day of each month and on the Final Maturity Date, commencing on the first of such dates to occur after the Closing Date.</p> <p>DIP Agmt. § 2.05; Int. Ord. ¶ 2(a), (f).</p> <p>The Debtors will pay all reasonable expenses incurred by the DIP Agent, the DIP Lenders and the Senior Noteholder Group, (including the reasonable fees and disbursements of all counsel for the DIP Lenders and any internal or third-party appraisers, consultants, financial advisors and auditors advising the DIP Lenders, with such counsel fees incurred to date to be paid on the Closing Date) in connection with the preparation, execution, delivery, administration and enforcement of the DIP Loan Documents, the First Lien Loan Documents, the Interim Cash Collateral Order, the Interim Order, any Final Order and any other agreements, instruments, pleadings or other documents prepared or reviewed in connection with any of the foregoing, without regard to the amounts set forth with respect thereto in the Approved Budget, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated.</p> <p>Int. Ord. ¶ 19(a).</p>
<p><u>Conditions</u></p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)]</p> <p>[Guidelines § 1(b)]</p> <p>[Guidelines § 1(l)]</p>	<p><u>Conditions to Interim Date Loans.</u> The obligation of each Lender to make the Interim Date Loans is subject to the following conditions precedent: (i) there shall have been delivered to the Administrative Agent a properly executed counterpart of each of the Loan Documents; (ii) the Administrative Agent shall have received the documents listed in section 4.01(b) of the DIP Credit Agreement; (iii) the Lenders shall be satisfied that all requisite Governmental Authorities, equityholders and material third parties shall have approved, authorized or consented to the transactions contemplated by the terms of the DIP Credit Agreement; (iv) no action shall have been taken and no applicable law shall have been enacted, adopted or issued that would, as of the Closing Date, prevent the consummation of the transactions contemplated by the terms of this Agreement; no injunction, restraining order or order of</p>

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING

any nature by a Governmental Authority shall have been issued as of the Closing Date that would prevent or materially interfere with the consummation of the transactions contemplated by the terms of this Agreement; no Proceeding shall be pending or, to the knowledge of any Company after due inquiry, threatened other than Proceedings that would not, individually or in the aggregate, have a Material Adverse Effect; (v) the Administrative Agent and Houlihan Lokey shall have received all Fees and other amounts due and payable on or prior to the Closing Date; (vi) the Administrative Agent shall have received a copy of the insurance policies required by Section 5.06 of the DIP Credit Agreement; (vii) the Administrative Agent and Required Lenders shall have approved a motion in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders seeking approval of the Commitments and Loans made hereunder; (viii) the Interim Order shall have been entered by the Bankruptcy Court no later than February 29, 2012; and (ix) the Closing Date shall be no later than March 2, 2012

DIP Agmt. § 4.01.

Conditions to All Loans. The obligation of each Lender to make the Loans is subject to the following conditions precedent: (i) the Administrative Agent shall have received a Borrowing Request; (ii) at least two (2) Business Days prior to the funding of any Loans, the Administrative Agent and the Lenders shall have received all documentation and other information required by bank regulatory authorities under or in respect of applicable Money Laundering Laws or other applicable law related to “know-your-customer” matters, including the Executive Order that were requested at least three (3) Business Days prior to the Closing Date; (iii) the Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth in the DIP Loan Documents on its part to be observed or performed and no Default or Event of Default shall have occurred and be continuing on such date; (iv) each of the representations and warranties made by any Loan Party shall be true and correct in all material respects on the date that Loans are made by the Lenders to the Borrower; (v) no judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it; no injunction or other restraining judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans hereunder; (vi) at the time of the making of any Loan, the Interim Order or the Final Order, as applicable, shall be effective, shall not have terminated or expired and shall not have been stayed, reversed, vacated, amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent.

DIP Agmt. § 4.02.

Funding Conditions. The DIP Lenders shall have no obligation to make any DIP Loan during the Interim Period unless and until all conditions precedent to the making of any such DIP Loan under the DIP Loan Documents and the Interim Order have been satisfied in full or waived by the DIP Agent and/or the DIP Lenders in accordance with the DIP Loan Documents and the Interim Order.

Int. Ord. ¶ 2(i).

Conditions on Prepayment. Any prepayments must be in amounts that are multiple of \$250,000 and not less than \$500,000. Prepayments are applied in particular priority set forth in section 2.10 of the DIP Credit Agreement. Borrower must provide one Business Day notice of the prepayment and such notice is irrevocable.

DIP Agmt. § 2.10.

Adequacy of the Budget

For every one-week period commencing on February 27, 2012, and thereafter, tested by reference to the Variance Report each week, the aggregate expenditures and disbursements by the Debtors for each line item in the Approved Budget shall not exceed 15% of the corresponding line-item expenditures

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<p>[Guidelines § 1(b)]</p> <p>[Guidelines § 7]</p>	<p>budgeted for such time period; <u>provided, however</u>, that any budgeted line-item expenditure for such one-week period may be increased by an amount equal to the unused portion of such corresponding budgeted line-item from the immediately preceding week.</p> <p>DIP Agmt. § 5.15; Int. Ord. ¶ 2(d), (e).</p> <p>In accordance with section 7 of the Guidelines, the Debtors have reason to believe that the budget will be adequate (inclusive of professional fees and disbursements) considering all available assets, to pay all administrative expenses due or accruing during the period covered by the budget.</p>
<p>Liens and Priorities and Effect on Existing Liens</p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)(ii), (xi)]</p> <p>[Guidelines § 1(f) & (d)]</p>	<p><u>DIP Liens.</u> Subject to paragraph 18 of the Interim Order and the Carve-Out, the Debtors grant to the DIP Agent for its benefit and the ratable benefit of the DIP Lenders as security for the DIP Obligations, the following security interests and liens:</p> <ul style="list-style-type: none"> • a first priority Lien on all unencumbered DIP Collateral; • a junior Lien on all DIP Collateral that is subject to any Permitted Prior Lien; • a first priority senior priming Lien on all DIP Collateral of the Debtors (including Cash Collateral) that is senior in all respects to (x) the Pre-Petition Liens and (y) except for the Permitted Prior Liens, any other liens in favor of any other person or entity, including all Liens junior to the Pre-Petition Liens (the “<i>Primed Liens</i>”); <u>provided, however</u>, that the priming Liens described in this clause shall be subject and subordinate to the Carve-Out and the Permitted Prior Liens. <p>DIP Agmt. § 2.18; Int. Ord. ¶ 2(j).</p> <p><u>Adequate Protection Liens.</u> The Debtors are providing the following protections in consideration for the use of Cash Collateral, the consent of the Senior Noteholder Group (and non-opposition of the Second Lien Agent) to the entry of the Interim Order and the priming of the Senior Noteholder Group’s and the Second Lien Agent’s liens, claims and interests in the Pre-Petition Collateral:</p> <ul style="list-style-type: none"> • Subject to paragraph 18 of the Interim Order, the Debtors will provide the Pre-Petition Secured Parties the Adequate Protection Replacement Liens to the extent of any diminution in value of the interests of the Pre-Petition Secured Parties in the respective Pre-Petition Collateral, including, without limitation, the Cash Collateral. • The Debtors will grant the Pre-Petition Secured Parties allowed super-priority administrative claims pursuant to section 507(b) of the Bankruptcy Code, which super-priority claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code. • The Senior Noteholder Group shall receive current cash payment of all reasonable fees and expenses. • The Debtors will deliver to the Senior Noteholder Group (with a copy to the Second Lien Agent) all information, reports, documents and other material that the Debtors provide to the DIP Lenders pursuant to the DIP Loan Documents. <p>Int. Ord. ¶¶ 4, 5.</p>
<p>Roll-up</p> <p>[Guidelines § 1(f)]</p> <p>[Guidelines § 1(g)]</p>	<p>As described in greater detail below, the Debtors, the DIP Lenders, and the Creditors’ Committee have agreed to delay to the Final Hearing consideration of a “roll-up” of certain existing prepetition secured debt in conjunction with the DIP Facility.</p>

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Carve-Out

[Fed. R. Bankr. P.
4001(c)(1)(B)]

[Guidelines § 1(e)]

[Guidelines § 4]

“***Carve-Out***” means (i) all unpaid fees required to be paid in these Cases to the Clerk of the Court and to the office of the United States Trustee under 28 U.S.C. § 1930 and 31 U.S.C. § 3717, whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees, costs, disbursements and expenses (the “***Debtor Professional Fees***”) of professionals retained by the Debtors in these Cases (collectively, the “***Debtors’ Professionals***”) that are incurred and earned prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any retainers and any available funds remaining in the Debtors’ estates for such creditors; (iii) all reasonable and documented unpaid fees and expenses (the “***Committee Professional Fees***” and together with the Debtor Professional Fees, the “***Professional Fees***”) of professionals retained by the Committee in these Cases (collectively, the “***Committee’s Professionals***”) and all reasonable expenses of any member of the Committee that are incurred and earned prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under sections 105(a), 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any available funds remaining in the Debtors’ estates for such creditors; (iv) all reasonable and documented unpaid fees, costs, disbursements and expenses of the Debtors’ Professionals and Committee’s Professionals that are incurred and earned on or after the first business day after the delivery by the Senior Noteholder Group of a Carve-Out Trigger Notice, that are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise and remain unpaid after application of any retainers and any available funds remaining in the Debtors’ estates for such creditors and in an aggregate amount not to exceed \$1.9 million (the “***Carve-Out Cap***”) (plus all unpaid fees, costs, disbursements and expenses of the Debtors’ Professionals and Committee’s Professionals allowed by this Court at any time that were incurred on or prior to the first business day following the delivery of the Carve-Out Trigger Notice); and (v) in the event of a conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professional retained by such trustee in an aggregate amount not to exceed \$200,000 (clauses (i) through (v), collectively, the “***Carve-Out***”); provided, however, that immediately upon either (A) the delivery of a Carve-Out Trigger Notice or (B) termination of the DIP Facility and the Debtors’ authority to use Cash Collateral, but only if such termination occurs prior to the effective date of any plan of liquidation, the Debtors shall immediately fund into a segregated account established by the Debtors (the “***Carve-Out Account***”) an amount equal to the aggregate amount accrued under the Carve-Out prior to the delivery of the Carve-Out Trigger Notice, plus the amount of the Carve-Out Cap. If there are insufficient funds on the date the Carve-Out Trigger Notice is delivered to fund the full amount of the Carve-Out, including the Carve-Out Cap, into the Carve-Out Account, any additional cash proceeds thereafter received by the Debtors, from whatever source, shall be transferred by the Debtors into the Carve-Out Account prior to making any distributions to creditors. All funds in the Carve-Out Account shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of “Carve Out,” above, and then, to pay the obligations set forth in clause (iv) of the definition of “Carve Out,” above. All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Liens, the Pre-Petition Liens and Adequate Protection Replacement Liens such that, upon final payment of all allowed amounts due and owing under the Carve-Out, including the Carve-Out Cap, as determined by further order of the Court, any funds remaining in the Carve-Out Account shall be remitted to the Debtors and governed by the terms of the Interim Order. Notwithstanding anything to the contrary in the Interim Order, all liens and claims granted pursuant to the Interim Order, as well as all liens and claims granted pursuant to any Pre-Petition Credit Obligations, shall be subject to the Carve-Out. The term “***Carve-Out Trigger Notice***” shall mean a written notice delivered by the DIP Agent or its counsel to the Debtors’ lead counsel, the U.S. Trustee, counsel to the Second Lien Lenders and lead counsel to the Committee appointed in these Cases, which notice may be delivered at any time following the occurrence and during the continuation of

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	<p>any Event of Default, expressly stating that the Carve-Out is invoked.</p> <p>Any payments actually made pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503 or 1103 or otherwise to Debtors' Professionals or Committee's Professionals shall (i) in the case of the Debtors' Professionals only, not be paid from the proceeds of any DIP Collateral, Adequate Protection Collateral, Pre-Petition Collateral or Cash Collateral until such time as all retainers, if any, held by such Debtors' Professionals or the Committee's Professionals have been reduced to zero and (ii) in the case of any payments made on account of any fees and expenses described in clause (iv) of the definition of Carve-Out, reduce the applicable Carve-Out Cap on a dollar-for-dollar basis. So long as no Carve-Out Trigger Notice has been delivered, the Debtors shall be permitted to pay the Professional Fees, allowed and payable under 11 U.S.C. 328, 330 or 331, as the same may be due and payable. Any compensation and expenses previously paid, or accrued but unpaid, prior to the delivery of the Carve-Out Trigger Notice and any fees, expenses, indemnities or other amounts paid to the DIP Secured Parties, the Pre-Petition Secured Parties or such party's respective attorneys and agents under the Pre-Petition Credit Obligations or otherwise, shall not reduce the Carve-Out Cap.</p> <p>So long as no Carve-Out Trigger Notice has been delivered to the Debtors, the Debtors are authorized to use advances under the DIP Facility, in accordance with and limited to the amounts set forth on the Approved Budget, on a cumulative basis by Debtor Professional or Committee Professional, as applicable, to pay such compensation and expense reimbursements of the Debtors' Professionals and the Committee's Professionals as the same may be due and payable (but regardless of when such compensation and reimbursement of expenses are so allowed).</p> <p>Int. Ord. ¶ 8(a)-(c).</p>
<p><u>Milestones</u></p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)(v-vi)]</p> <p>[Guidelines § 1(i)(v), (k)]</p>	<p>Each Loan Party shall take all actions necessary to achieve the following "<i>Milestones</i>":</p> <ul style="list-style-type: none"> • entry of the Final Order approving the DIP Credit Agreement by March 16, 2012; • delivery to the Administrative Agent, by April 22, 2012, of a business plan for the Borrower and its Subsidiaries in form and substance satisfactory to the Required Lenders in their sole discretion which shall take into consideration the uncertainty related to the revised collective bargaining agreements referenced in clause 5.13(d) of the DIP Credit Agreement, and among other things, demonstrate the basis on which the Borrower and its Subsidiaries are able to achieve such business plan; • rationalization of airplane fleet in a manner reasonably satisfactory to the Required Lenders by April 22, 2012; • (i) execution and delivery of an agreement with the unions on the terms of the revised collective bargaining agreements on terms reasonably satisfactory to the Required Lenders by May 22, 2012, or (ii) to the extent such agreement has not been executed and delivered by May 22, 2012, evidence satisfactory to the Required Lenders that sufficient progress has been made prior to such date by the parties with respect to the finalization of terms of the revised collective bargaining agreements; • on or prior to June 22, 2012, the Debtors and the Required Lenders shall have mutually agreed on (i) a strategy for the Debtors to conclude their Chapter 11 Cases, whether by sale, plan of reorganization or otherwise and (ii) an additional set of Milestones to implement such strategy; and • delivery to the Administrative Agent, by June 22, 2012, of an updated business plan for the Borrower and its Subsidiaries in form and substance satisfactory to the Required Lenders in their sole discretion which shall, among other things, demonstrate the basis on which the Borrower and its Subsidiaries are able to achieve such updated business plan and after June 22, 2012, Net Government Receivables will be greater than the aggregate amount of \$15.0 million.

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	DIP Agmt. § 5.13.
<p><u>Joint Liability</u> [Guidelines § 1(m)]</p>	<p>The DIP Super-Priority Claims, the First Lien Super-Priority Claims, and the Second Lien Super-Priority Claims against each Debtor shall be against each Debtor on a joint and several basis.</p> <p>Int. Ord. ¶¶ 2(m), 4(b), 5(b).</p> <p>The Guarantors jointly and severally, unconditionally guarantee to each Secured Party and its successors and assigns the obligations under the DIP Loan Documents.</p> <p>DIP Agmt. Art. 7.</p>
<p><u>Stipulations of the Debtors</u> [Fed. R. Bankr. P. 4001(c)(1)(B)(iii) and (d)(1)(B)]</p>	<p>The Interim Cash Collateral Order contains certain stipulations by the Debtors, including:</p> <ul style="list-style-type: none"> • As of the Commencement Date, the Debtors were truly and justly indebted (a) to the Senior Noteholders pursuant to the First Lien Credit Documents, without defense, counterclaim or offset of any kind and (b) to the Second Lien Lenders pursuant to the Second Lien Credit Documents, without defense, counterclaim or offset of any kind. • As of the Commencement Date, the Pre-Petition Liens (a) are legal, valid, binding, enforceable, non-avoidable and perfected liens, (b) were granted to, or for the benefit of, the Pre-Petition Secured Parties for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Each of the guaranties provided pursuant to the Pre-Petition Credit Documents continues in full force and effect notwithstanding any use of Cash Collateral permitted under the Interim Order. • All of the Debtors' cash, including the cash in its deposit accounts, wherever located, whether Pre-Petition Collateral or proceeds thereof, constitutes the Cash Collateral of the Pre-Petition Secured Parties. • Each Debtor shall be deemed to have forever waived, discharged, and released Pre-Petition Secured Party Releasees of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights. <p>Int. Ord. ¶ E.</p>
<p><u>Binding Effect of the Debtors' Stipulations on Third Parties; Investigation Periods</u> [Fed. R. Bankr. P. 4001(c)(1)(B)(viii) and (d)(1)(B)] [Guidelines § 5]</p>	<p>The Debtors' Stipulations shall be binding upon each other party in interest, including the Committee and any trustee of the Debtors' estates appointed in these Cases, unless on or before April 28, 2012 (such time period shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the "Challenge Period Termination Date"), the Committee, any trustee of the Debtors' estates appointed in these Cases, or other party in interest other than the Debtors obtains the authority to commence and commences, prior to the expiration of the Challenge Period, a contested matter or adversary proceeding (x) challenging or otherwise objecting to any part of the Debtors' Stipulations, or (y) against any or all of the Indenture Trustee and the Second Lien Agent and/or the other Pre-Petition Secured Parties challenging any aspect of the Pre-Petition Credit Obligations, Pre-Petition Liens or the actions or inactions of any of the Indenture Trustee and the Second Lien Agent or the other Pre-Petition Secured Parties arising out of or related to the Pre-Petition Credit Obligations, or Pre-Petition Liens, including any claim against the Indenture Trustee, the Second Lien Agent or any other Pre-Petition Secured Party in the nature of "lender liability" causes of action, setoff, avoidance, counterclaim or defense to the Pre-Petition Credit Obligations (including but not limited to those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the</p>

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	<p>Bankruptcy Code (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the “<i>Claims and Defenses</i>”) and (b) this Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding.</p> <p>Int. Ord. ¶ 7.</p>
<p><u>Limitation on Obligation to Fund Activities of Debtors and Committee</u></p> <p>[Guidelines §§ 1(h), 5]</p> <p>[E.D.N.Y. Bankr. L.R. 4001-5(a)(iii)]</p>	<p>No portion of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) the Liens or claims of any or all of DIP Agent and/or the DIP Lenders, the Pre-Petition Liens of the Indenture Trustee the Second Lien Agent, and/or the Pre-Petition Secured Parties or the initiation or prosecution of any claim or cause of action (including any Claims and Defenses) against any or all of DIP Agent or the DIP Lenders, including any claim under Chapter 5 of the Bankruptcy Code or (ii) any claims or causes of actions (including any Claims and Defenses and any claims or causes of action under Chapter 5 of the Bankruptcy Code) against any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors and employees, including formal discovery proceedings in anticipation thereof, and/or challenging any Lien or claim of any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, or asserting any other lender liability or other claim or cause of action against any of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties. The foregoing notwithstanding, no more than \$50,000, in the aggregate, of the amounts set forth in the Approved Budget, the Carve-Out, DIP Collateral, Cash Collateral or any proceeds of the DIP Facility may be used by the Committee, or any representative of the estates, to investigate, but not prosecute or prepare to prosecute any challenge to, the claims and/or liens of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties under the Pre-Petition Credit Documents.</p> <p>Furthermore, none of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility shall be used to prevent, hinder or delay the DIP Lenders or the DIP Agent from enforcing or realizing upon the DIP Collateral once a Default or Event of Default has been determined by the Court to have occurred and to be continuing under the DIP Loan Documents or the Interim Order.</p> <p>Int. Ord. ¶ 8(d)–(e).</p>
<p><u>Waiver/Modification of Automatic Stay</u></p> <p>[Fed. R. Bankr. P. 4001(c)(1)(B)(iv) and (d)(1)(B)]</p> <p>[Guidelines §1(o)]</p>	<p>Each of the DIP Agent, the Indenture Trustee and the Second Lien Agent (solely with respect to the Adequate Protection Replacement Liens) may, each in its sole discretion, file financing statements, mortgages, security agreements, notices of Liens and other similar documents, and is hereby granted relief from the automatic stay in order to do so.</p> <p>Int. Ord. ¶ 6.</p> <p>Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Agent may, and at the written direction of the Required Lenders shall, (i)(1) declare all DIP Obligations to be immediately due and payable, (2) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and (3) terminate the DIP Facility and any other DIP Loan Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; and (ii) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral.</p> <p>In addition to the remedies described above and other customary remedies, five (5) days following the Termination Declaration Date, the DIP Agent shall have relief from the automatic stay and may foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the</p>

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	<p>proceeds thereof to the DIP Obligations, occupy the Debtors' premises to sell or otherwise dispose of the DIP Collateral or otherwise exercise remedies against the DIP Collateral permitted by applicable non-bankruptcy law. During such five (5) day period, the Debtors and the Committee shall be entitled to an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court at such hearing determines that an Event of Default has not occurred and is not continuing, the automatic stay, as to the DIP Lenders and DIP Agent, shall automatically terminate at the end of such five (5) business day period, without further notice or order. Notwithstanding the foregoing, nothing herein shall preclude the DIP Agent from seeking an order from the Court authorizing the DIP Agent to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) days' notice.</p> <p>The automatic stay is modified as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Senior Noteholder Group, the Pre-Petition Secured Parties, the DIP Lenders under the DIP Loan Documents, the DIP Facility and the Interim Order, (ii) authorize the DIP Lenders and the other Pre-Petition Secured Parties to retain and apply payments hereunder, and (iii) as otherwise necessary to implement and effectuate the provisions of the Interim Order.</p> <p>Int. Ord. ¶ 16(a).</p>
<p>Section 506(c) <u>Waiver</u> [Fed. R. Bankr. P. 4001(c)(1)(B)(x)]</p>	<p>As described in greater detail below, the Debtors, the DIP Lenders, and the Creditors' Committee have agreed to delay to the Final Hearing consideration of a waiver of claims under section 506(c) of the Bankruptcy Code.</p>

Material Provisions Pursuant to Local Rule 4001-5(a)

15. Pursuant to Local Rule 4001-5(a)(i)–(iii), the Debtors are required to disclose the following provisions of the Interim Order:

- **Disparate Treatment of Professionals (L.R. 4001-5(a)(i))**. The Interim Order provides that the fees incurred by the Debtors' Professionals cannot be paid from the proceeds of any DIP Collateral, Adequate Protection Collateral, Pre-Petition Collateral or Cash Collateral until the any prepetition retainers have been reduced to zero. Int. Ord. ¶ 8(b).
- **Payment of Lenders Fees (L.R. 4001-5(a)(ii))**. The Debtors will pay all reasonable expenses incurred by the DIP Agent, the DIP Lenders and the Senior Noteholder Group, (including the reasonable fees and disbursements of all counsel for the DIP Lenders and any internal or third-party appraisers, consultants, financial advisors and auditors advising the DIP Lenders). The Lender Professionals shall not be required to comply with the U.S. Trustee fee guidelines but the Lender Professionals shall submit copies of invoices to the U.S. Trustee, counsel for the Committee, counsel for the Second Lien Lenders and such other parties as the Court may direct. If the Debtors, U.S. Trustee or the Committee objects to the reasonableness of the fees and expenses of any Lender Professional and cannot resolve such objection within ten (10) days of

receipt of such invoices, the objecting party shall file with the Court and serve on such Lender Professional an objection limited to the issue of reasonableness of such fees and expenses. Int. Ord. ¶ 19(a).

- **Use of Collateral to Challenge Liens (L.R. 4001-5(a)(iii))**. No portion of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) the Liens or claims of any or all of DIP Agent and/or the DIP Lenders, the Pre-Petition Liens of the Indenture Trustee the Second Lien Agent, and/or the Pre-Petition Secured Parties or the initiation or prosecution of any claim or cause of action (including any Claims and Defenses) against any or all of DIP Agent or the DIP Lenders, including any claim under Chapter 5 of the Bankruptcy Code or (ii) any claims or causes of actions (including any Claims and Defenses and any claims or causes of action under Chapter 5 of the Bankruptcy Code) against any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors and employees, including formal discovery proceedings in anticipation thereof, and/or challenging any Lien or claim of any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, or asserting any other lender liability or other claim or cause of action against any of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties. The foregoing notwithstanding, no more than \$50,000, in the aggregate, of the amounts set forth in the Approved Budget, the Carve-Out, DIP Collateral, Cash Collateral or any proceeds of the DIP Facility may be used by the Committee, or any representative of the estates, to investigate, but not prosecute or prepare to prosecute any challenge to, the claims and/or liens of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties under the Pre-Petition Credit Documents. Furthermore, none of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility shall be used to prevent, hinder or delay the DIP Lenders or the DIP Agent from enforcing or realizing upon the DIP Collateral once a Default or Event of Default has been determined by the Court to have occurred and to be continuing under the DIP Loan Documents or the Interim Order. Int. Ord. ¶ 8(d)–(e).

Basis for Relief

I. The Debtors' Liquidity Needs

16. As described in the First Day Declaration and in the Snyder Declaration, the Debtors' businesses have been adversely impacted by a reduction in their military entitlement

coupled with the decrease in military demand due to the end of the war in Iraq, the anticipated withdrawal of troops from Afghanistan and a significant reduction in the rates paid by the military. Additionally, due in part to the global recession, the Debtors suffered a significant decrease in demand for commercial cargo services, resulting in a substantial decline in commercial revenues. While the Debtors have navigated fluctuations in demand in the past, the current decrease, coupled with high labor and fixed costs, excess aircraft and an overleveraged balance sheet, reduced liquidity to the point where the Debtors were no longer able to maintain their fleet and employee level and fund their prepetition secured debt obligations.

17. On the Commencement Date, the Debtors had sufficient cash on hand to fund operations and case administration during the initial phases of the chapter 11 cases. Prior and subsequent to the Commencement Date, however, certain events negatively impacted the Debtors' liquidity, leading the Debtors and their advisors to conclude that additional financing would be necessary to fund the Debtors' chapter 11 cases. Notably, as noted in the Debtors' motion seeking entry of the Interim Cash Collateral Order, upon the commencement of these chapter 11 cases, the government — the Debtors' largest customer — withheld approximately \$20 million in payables from the Debtors, severely restricting liquidity. As a result, and despite the Debtors' mitigation of these events, the Debtors have an immediate need to access additional liquidity to, among other things, continue to effectively operate their businesses and to preserve estate value, maintain business relationships with aircraft and equipment lessors, vendors, suppliers and customers, satisfy their payroll obligations, make capital expenditures and satisfy other working capital and operational needs.

18. Given the importance of fulfilling these critical obligations to preserve and maintain the value of the Debtors' going concern operations, the Debtors engaged in negotiations

with their prepetition secured lenders immediately after the Commencement Date and, through their financial advisors, conducted a thorough and reasonable marketing effort to determine whether other financing sources existed for the Debtors under the current circumstances. These efforts culminated in the proposed DIP Facility, which provides the Debtors with the liquidity needed to prosecute these chapter 11 cases.

II. Proposed Postpetition Financing

A. The Debtors' Marketing Efforts for Postpetition Financing⁴

19. In January 2012, the Debtors retained Rothschild Inc. ("*Rothschild*") as their financial advisor and investment banker to assist the Debtors with their evaluation of strategic alternatives, including, if necessary, obtaining financing to fund administrative and operational costs arising during these chapter 11 cases. Leading up to and immediately following the Commencement Date, the Debtors worked closely with Rothschild to identify potential sources of postpetition financing, including, among others, the Senior Noteholder Group. The Debtors and Rothschild engaged in discussions with and ultimately received competing term sheets for proposed postpetition financing from both the Senior Noteholder Group and the Second Lien Lenders.

20. In addition, in an attempt to obtain financing on the best possible terms, the Debtors and Rothschild solicited indications of interest with respect to potential postpetition financing from various third parties. Rothschild distributed solicitation materials and confidentiality agreements to more than 10 sophisticated financial institutions, collateralized loan and collateralized debt funds, as well as hedge funds and private equity funds active in the debtor in possession market in an effort to obtain alternative proposals for debtor-in-possession

⁴ Section 2 of the Guidelines requires the Debtors to describe their and their advisors' efforts to obtain alternative financing as well as the basis on which the Debtors determined that the DIP Facility is on the best terms available, including the material facts that bear on whether the DIP Facility is being extended in good faith.

financing. In particular, Rothschild solicited these parties' interest in providing funding on either a priming or junior lien basis. Rothschild and the Debtors identified potential lenders based on a number of factors, including their ability to quickly complete diligence, the likelihood of closing a financing facility in the near term, and willingness to engage in a priming fight with the Debtors' existing lenders.

21. As explained in the Snyder Declaration, through discussions with potential lenders, it became apparent that the Debtors' existing capital structure, including the Debtors' level of secured debt and lack of unencumbered assets, foreclosed any opportunities for the Debtors to access unsecured or junior credit. Further, in the absence of a successful priming fight, any debtor in possession loan provided by parties other than the Senior Noteholder Group would have required the consent of the Senior Noteholder Group, which the Debtors understood would not be forthcoming.

22. At the end of the process, only the Senior Noteholder Group and the Second Lien Lenders submitted term sheets for a proposed debtor-in-possession financing facility during the marketing process. The Debtors and their advisors carefully considered the merits of the two proposals — including with respect to prevailing market conditions — and, after a thorough evaluation, the Debtors determined that the Senior Noteholder Group's proposal offered the most reasonable postpetition financing terms that would ensure the Debtors a committed source of funding, maximize estate values, and prevent the need to engage in a costly, time-consuming priming fight at a critical juncture in these chapter 11 cases.

B. The DIP Facility

23. After extended good faith, arm's-length negotiations, the Senior Noteholder Group, as proposed DIP Lenders, agreed to provide the DIP Facility on the terms provided in the DIP Credit Agreement, which are summarized above. The proceeds of the DIP Facility, which

the Debtors estimate will be sufficient to finance these chapter 11 cases, will be used (a) for general working capital and other purposes permitted under the DIP Credit Agreement, (b) to fund the costs of administering these chapter 11 cases and (c) to pay all fees and expenses provided for under the DIP Credit Agreement and authorized by the Court.

24. Importantly, the financial terms and covenants of the DIP Facility are standard and reasonable for financing of this kind. Specific to these chapter 11 cases, the DIP Facility provides for certain milestones for the confirmation of a plan of reorganization and other restructuring initiatives (*e.g.*, labor negotiations, fleet rationalization) and, subject to the Final Order, will require a “roll-up” of certain prepetition debt. Based on the extensive negotiations that took place, the Debtors believe that these are the only terms on which the DIP Lenders will provide the financing. As the DIP Facility proceeds are necessary and the only financing available which avoids the value-destructive effects of a priming fight — *i.e.*, the inevitable result of any alternative financing arrangement (including an arrangement provided by the Second Lien Lenders) — the Debtors believe that sufficient justification exists for agreeing to these provisions. Moreover, the Debtors and their advisors understand that the DIP Lenders would not have been amenable to providing financing without these heavily bargained-for protections.

25. As noted, the DIP Facility is the product of arm’s-length negotiations. Indeed, the Debtors and the Creditors’ Committee successfully negotiated for several key concessions from the DIP Lenders, including, for example, the payment of reasonable expenses of the Creditors’ Committee members and a \$50,000 budget for the Creditors’ Committee to investigate liens or claims of the DIP Agent, the DIP Lenders, the Indenture Trustee, the Second Lien Agent, and the Pre-Petition Secured Parties.

C. Use of Cash Collateral

26. In addition to the DIP Facility, the Debtors require the continued use of their existing Cash Collateral. Accordingly, the requisite Pre-Petition Secured Parties have consented to the Debtors' continued use of Cash Collateral subject to the terms of the Interim Order, which will replace the existing Interim Cash Collateral Order. The DIP Credit Agreement and Interim Order ensure the Debtors' continued access to Cash Collateral. Continued access to Cash Collateral will (a) ensure that the Debtors have continued access to sufficient working capital to, among other things, pay their employees, aircraft and equipment lessors, vendors, and suppliers, (b) enable the Debtors to continue honoring their prepetition obligations under and in accordance with other "first-day" orders entered by the Court and (c) satisfy administrative expenses incurred in connection with the commencement of these chapter 11 cases.

D. Adequate Protection Package

27. The Debtors and the Pre-Petition Secured Parties have agreed on consideration that will adequately protect the Pre-Petition Secured Parties' interests in the Debtors' property from diminution in value caused by the Debtors' use of the Cash Collateral, as well as for any decline in, or diminution of, the value of the Pre-Petition Secured Parties' liens or security interests under the Pre-Petition Facilities. Here, the Debtors propose to provide the Pre-Petition Secured Parties with the following adequate protection package which comprises, among other things, four primary forms of adequate protection (the "***Adequate Protection Package***"):

- *First*, subject to paragraph 18 of the Interim Order, the Debtors will provide the Pre-Petition Secured Parties the Adequate Protection Replacement Liens to the extent of any diminution in value of the interests of the Pre-Petition Secured Parties in the respective Pre-Petition Collateral, including, without limitation, the Cash Collateral.
- *Second*, the Debtors will grant the Pre-Petition Secured Parties allowed super-priority administrative claims pursuant to section 507(b) of the Bankruptcy Code, which super-priority claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code.

- *Third*, the Senior Noteholder Group shall receive current cash payment of all reasonable fees and expenses.
- *Fourth*, the Debtors will deliver to the Pre-Petition Secured Parties all information, reports, documents and other material that the Debtors provide to the DIP Lenders pursuant to the DIP Loan Documents.

Interim Order ¶¶ 4–5. Notably, the Adequate Protection Package set forth in the Interim Order is substantively identical to the adequate protection the Debtors currently are providing to the Pre-Petition Secured Parties under the terms of the Court’s existing Interim Cash Collateral Order.

28. In addition to the Adequate Protection Package itself, and as noted in the Debtors’ motion requesting the relief granted in the Interim Cash Collateral Order and the Snyder Declaration, the Debtors’ preservation of estate assets through the use of Cash Collateral serves as its own form of adequate protection. Indeed, the Debtors’ secured creditors will inherently benefit from the Debtors’ proposed use of the Cash Collateral, which will prevent diminution of the value of the Pre-Petition Collateral and enhance the likelihood of preserving and maximizing the Debtors’ overall going concern value.

Supporting Authority

I. The Debtors Should be Authorized to Obtain Postpetition Financing

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

29. The Court should authorize the Debtors to enter into the DIP Loan Documents and obtain access to the DIP Facility and the Cash Collateral as an exercise of the Debtors’ sound business judgment.

30. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and

policies underlying, the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance with its sound business judgment in obtaining such credit. *See In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("the applicable factors can be synthesized as follows: (1) That the proposed financing is an exercise of sound and reasonable business judgment . . .").

31. Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

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

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

32. The Debtors' execution of the DIP Loan Documents is an exercise of their sound business judgment that warrants approval by the Court. Prior to and since the Commencement Date, the Debtors and their advisors undertook a detailed investigation as to the Debtors' projected financing needs during the pendency of any chapter 11 case, and determined that the Debtors would require postpetition financing to support their operational and restructuring activities. Accordingly, after extensive marketing efforts by the Debtors and their advisors, the Debtors negotiated the DIP Loan Documents with the DIP Lenders in good faith, at arm's-length, and with the assistance of outside counsel, to obtain the required postpetition financing on terms favorable to the Debtors.

33. The Debtors believe that the Court's consideration of non-economic factors, as permitted and required by *ION Media*, is especially appropriate here. Absent the Senior Noteholder Group's willingness and ability to fund the DIP Facility, the Debtors potentially would face a prolonged and value-destructive priming fight with their existing lenders to the extent the Debtors sought to enter into alternative financing arrangements. Moreover, as set forth in the Snyder Declaration, it is unclear whether competing third party lenders would be in a position to provide as certain a financing arrangement as currently available under the DIP Facility. The Debtors submit that the certainty afforded by the DIP Facility — with respect to both its consensual nature as well as the likelihood of closing and the DIP Lenders' support of the Debtors' restructuring efforts — provides additional and ample reason to authorize it.

34. Accordingly, the Debtors and their advisors determined in their sound business judgment that the DIP Loan Documents provide a greater amount of financing on more favorable terms than any other reasonably available alternative. As noted above, the DIP Loan Documents

will provide the Debtors with access to no less than \$15 million immediately after entry of the Interim Order and a total of \$45 million (inclusive of the amount authorized by the Interim Order) after entry of the Final Order, which the Debtors and their advisors have independently determined should be sufficient to support the Debtors' ongoing operations and reorganization activities through the pendency of these chapter 11 cases. Additionally, the DIP Loan Documents provide the Debtors with continued access to the Cash Collateral on substantially the same terms as the Interim Cash Collateral Order, which preserves the status quo and relieves the Debtors of the cost of borrowing additional amounts to replace that cash. Thus, the Debtors submit that entering into the DIP Loan Documents constitutes an exercise of the Debtors' sound business judgment that should be approved by the Court.

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

35. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

36. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)* 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; see also *Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989). See also *Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

37. As described above and in the Snyder Declaration, the Debtors and Rothschild identified and solicited offers from more than 10 potential postpetition lenders other than the Senior Noteholder Group and the Second Lien Lenders in the weeks prior to and immediately following the Commencement Date. None of those potential lenders, however, executed confidentiality agreements with the Debtors or conducted diligence regarding potential postpetition financing terms — a predictable result given the Senior Noteholder Group’s likely resistance to any attempt to prime their prepetition liens. Notwithstanding the Debtors’ efforts, the Debtors were simply unable to obtain sufficient, or any, postpetition financing in the form of

unsecured credit or solely as an administrative expense. The Debtors' significant secured debt precludes them from obtaining postpetition financing in the amount they require on terms other than on a secured and superpriority basis.

38. The Court should therefore (a) authorize the Debtors to provide the DIP Agent, on behalf of itself and the other DIP Lenders, senior liens on the Debtors' unencumbered property as provided in section 364(c)(3) of the Bankruptcy Code, and junior liens on the Debtors' property that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Commencement Date (other than the liens primed under the DIP Facility) or to valid and unavoidable liens in existence immediately prior to the Commencement Date that are perfected after the Commencement Date as permitted by section 546(b) of the Bankruptcy Code, as provided in section 364(c)(2) of the Bankruptcy Code; and (b) grant the Debtors' repayment obligations under the DIP Loan Documents superpriority administrative expense status as provided for in section 364(c)(1) of the Bankruptcy Code.

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

39. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lienholders, if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1).

40. Here, the Debtors seek authority to enter into the DIP Loan Documents, which will provide the DIP Lenders priming liens on the Collateral currently secured by (as such terms are defined in the DIP Loan Documents):

- the existing Liens that secure the obligations under the Pre-Petition Indenture and the Pre-Petition Second Lien Credit Agreement;

- any other Liens, including Liens junior to the above-referenced Liens; *provided* that certain “Senior Liens” (*i.e.*, certain valid, enforceable, non-avoidable and perfected Liens identified on Schedule 6.07(b) of the DIP Credit Agreement that are senior to the prepetition liens) shall not be primed.

41. When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtors’ assets. Courts consider a number of factors, including, without limitation:

- a. whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);
- b. whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- c. whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);
- d. whether the proposed financing agreement was negotiated in good faith and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors; and
- e. whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep’t Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862–79, *cited in* Transcript of Record at 733:3-7, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009); *Barbara K. Enters.*, 2008 WL 2439649, at *10; *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (15th ed. rev. 2008).

42. The DIP Loan Documents satisfy each of these factors.

43. **First**, as described above and in the Snyder Declaration, the Debtors and their advisors explored a variety of possible financing sources, and ultimately determined that the DIP

Lenders offered the most viable option for obtaining the postpetition financing the Debtors require. The Debtors conducted arm's-length negotiations with the DIP Lenders regarding the terms of the DIP Loan Documents, and those agreements reflect the most favorable terms on which the DIP Lenders were willing to offer financing. No alternative financing at the favorable terms offered in the DIP Facility was available to the Debtors, and the Debtors are not able to obtain financing from the DIP Lenders other than financing secured by first priority priming liens. In light of the likely disruptive effects of any priming fight against the Senior Noteholder Group, as well as the Debtors' desire to administer these chapter 11 cases on a consensual basis, the Debtors' determined that accessing the DIP Facility from the DIP Lenders would best maximize estate value.

44. **Second**, the Debtors need the funds to be provided under the DIP Loan Documents to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Facility and use of the Cash Collateral, the Debtors will be unable to operate their business or prosecute these chapter 11 cases, which will threaten the Debtors' significant going concern value. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of these chapter 11 cases is in the best interest of all stakeholders.

45. **Third**, the terms of the DIP Loan Documents are reasonable and adequate to ensure the Debtors' ongoing ability to operate in chapter 11 and ultimately emerge as a stronger enterprise. Indeed, the DIP Facility will provide the Debtors with immediate access to at least \$15 million in postpetition financing, which the Debtors and their advisors have independently determined is sufficient and, as discussed in greater detail below, necessary to allow the Debtors to maintain their operations and their relationships with key constituents during these chapter 11

cases. Further, the DIP Loan Documents provide the Debtors with use of the Cash Collateral, which will maintain the Debtors' ability to access liquidity in the same accounts as prior to the Commencement Date, without the disruption or delay that would result if the Debtors were required to set aside that cash and re-fund their accounts with new postpetition borrowings. Accordingly, the terms of the DIP Loan Documents are reasonable and the DIP Loans and the Cash Collateral are sufficient to support the Debtors' operations and restructuring activities through the pendency of these chapter 11 cases.

46. **Fourth**, the Debtors and the DIP Lenders negotiated the DIP Loan Documents in good faith and at arm's-length, and the Debtors' entry into the DIP Loan Documents is an exercise of their sound business judgment and is in the best interests of their estates, creditors and other parties in interest.

47. **Finally**, as described below, the Debtors will provide adequate protection for the Pre-Petition Secured Parties' liens on and security interests in the Cash Collateral as well as any decline in, or diminution of, the value of the Pre-Petition Secured Parties' liens or security interests under the Pre-Petition Credit Obligations.

D. The Interests of the Pre-Petition Lenders Are Adequately Protected

48. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B); *In re 354 E. 66th St. Realty Corp.*, 177 B.R. 776, 782 (Bankr. E.D.N.Y. 1995) ("The purpose or intent of granting adequate protection payments are to maintain the status quo for that creditor and to protect the creditor from diminution or loss of the value of its collateral during the ongoing Chapter 11 case."). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate

protection fees, payment of interest, or granting of replacement liens or administrative claims. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted); *In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996).

49. Here, the Pre-Petition Secured Parties are adequately protected, notwithstanding the priming liens contemplated in the DIP Loan Documents. The adequate protection provided by the Adequate Protection Package — essentially a continuation of the adequate protection approved in the existing Interim Cash Collateral Order — is fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code. Accordingly, the Court should find that the Adequate Protection Package is fair and reasonable, and satisfies the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

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

50. The requisite Pre-Petition Secured Parties have consented to the Debtors’ continued use of Cash Collateral under the terms of the Interim Order, which will replace the Interim Cash Collateral Order as to the Debtors’ continued use of Cash Collateral, and the DIP Credit Agreement. The Debtors submit that their request to further use Cash Collateral complies with applicable Bankruptcy Code requirements.

51. The Debtors’ use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part, as follows:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

52. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Alternatively, section 363(c)(2)(B) of the Bankruptcy Code permits the Bankruptcy Court, after notice and a hearing, to authorize a debtor in possession's use of cash collateral without the consent of the secured party so long as the use is consistent with the provisions of section 363 of the Bankruptcy Code.

53. The Debtors have satisfied the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code, and should be authorized to use the Cash Collateral. *First*, the Debtors have the requisite Pre-Petition Secured Parties' consent to use Cash Collateral. The Senior Noteholder Group — representing approximately 70% in amount of the Senior Secured Lenders and more than exceeding the amount necessary to direct the Senior Secured Lenders' approval under the Indenture (§ 9.02) — has agreed to the terms of the Interim Order. In addition, given the consent of the Senior Secured Lenders, the Intercreditor Agreement provides that Second Lien Lenders are deemed not to oppose the Debtors' use of Cash Collateral and the related Adequate Protection Package. Intercreditor Agmt. § 6.1. Accordingly, because the Debtors have the requisite Pre-Petition Secured Parties' consent for the use of Cash Collateral under the proposed Interim Order, the Debtors' use of Cash Collateral should be approved under section 363(c)(2)(A) of the Bankruptcy Code.

54. *Second*, the Debtors' proposed adequate protection is consistent with the requirements of section 363 of the Bankruptcy Code and, therefore, the Debtors' use of Cash

Collateral — in addition to the requisite Pre-Petition Secured Parties having consented to it — meets the standard for approval under section 363(c)(2)(B) of the Bankruptcy Code. Indeed, other than non-substantive changes to conform with the terms and language of the proposed Interim Order, the Adequate Protection Package is the same as the adequate protection the Court approved for the existing Interim Cash Collateral Order. *See* Docket No. 32, ¶¶ 4–5. As described above, the Debtors are providing the Pre-Petition Secured Parties with the Adequate Protection Package, which is fair and reasonable, and adequately protects the Pre-Petition Secured Parties’ interests in the collateral securing the Debtors’ prepetition obligations from diminution during these chapter 11 cases, including by the Debtors’ use of the Cash Collateral pursuant to the terms hereof. Moreover, the Debtors’ preservation of estate assets through the use of Cash Collateral serves as its own form of “adequate protection.” The Debtors’ secured creditors, therefore, will inherently benefit from the Debtors’ proposed use of the Cash Collateral which will prevent avoidable diminution of the value of the Pre-Petition Collateral and enhance the likelihood of increasing or preserving the Debtors’ overall going concern value. This in and of itself serves to provide such parties “adequate protection” for Bankruptcy Code purposes. *Compare 495 Cent. Park*, 136 B.R. at 631 (noting that, in determining whether protection is “adequate,” courts consider “whether the value of the debtor’s property will increase as a result of the” use of collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1988) (“an increase in the value of the collateral . . . resulting from superpriority financing could result in adequate protection.” (citation omitted)), *aff’d*, 99 B.R. 117 (N.D. Ga. 1989). Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

III. The Terms of the DIP Facility are Reasonable

A. The Debtors Should be Authorized to Pay the Fees Associated with the DIP Facility

55. As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their providing the DIP Facility. Specifically, the Debtors will pay to the DIP Lenders certain up-front and other arrangement fees, including (a) an arranger a fee to the Administrative Agent equal to 1.0% of the aggregate amount of the total Commitments in effect on the Closing Date (\$450,000), (b) an upfront fee to the Administrative Agent equal to 2.0% of the stated principal amount of the sum of the aggregate Loans and Commitments as of the Closing Date, and (c) a structuring fee to the Administrative Agent equal to \$50,000 plus other fees and expenses. Additionally, the Debtors have agreed, subject to Court approval, to pay an unused commitment fee equal to 0.50% *per annum* on the daily average unused portion of the DIP Facility.

56. As explained in the Snyder Declaration, the fees, taken together with the other provisions of the DIP Loan Documents, represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the DIP Facility available. The Debtors considered the fees described above when determining in their sound business judgment that the DIP Loan Documents constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute their chapter 11 cases. The Debtors believe that paying these fees to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors and other parties in interest.

57. Courts routinely authorize debtors to pay fees similar to those the Debtors propose to pay, where the associated financing is, in the debtors' business judgment, beneficial to the debtors' estates. *See, e.g., In re Hostess Brands, Inc.*, Case No. 12-22052 (RDD) (Bankr.

S.D.N.Y. Feb. 3, 2012) (approving annual \$500,000 administration fee, unused commitment fee, and 3% non-refundable premium); *In re United Retail Inc.*, Case No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb. 2, 2012) (approving 0.50% unused commitment fee and undisclosed closing fee); *In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Jan. 25, 2012) [Docket No. 974] (approving commitment fees equal to 1.00% of the total commitment amount); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) (approving 0.75% unused commitment fee; 2.0% underwriting fee, and 1.0% upfront fee); *In re Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011) (approving 0.50% unused commitment fee and undisclosed underwriting, incentive, and other fees); *In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) (approving 2.0% DIP closing fee); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010) (approving 3.1% DIP and exit facility fee); *In re Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 6, 2009) (approving 3% exit fee), *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009) (approving 5.0% up front fee and a 1.0% exit/conversion fee); *In re Gen. Growth Prop., Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009) (approving 3.75% exit fee); *In re Aleris Int'l. Inc.*, Case No. 09-10478 (Bankr. D. Del. Mar. 18, 2009) (approving 3.5% exit fee and 3.5% front-end net adjustment against each lender's initial commitment); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Jan. 13, 2009) (approving an up-front 3% facility fee); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 8, 2009) (approving exit fee of 3%); *In re DJK Residential*, Case No. 08-10375 (Bankr. S.D.N.Y. Feb. 29, 2008) (approving 3% fee in connection with postpetition financing).

58. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

B. Provisions to be Considered at the Final Hearing

59. During negotiations regarding the DIP Facility, the Debtors, the DIP Lenders, and the Creditors' Committee engaged in discussions regarding certain terms of the DIP Facility to which the Creditors' Committee expressed reservations. Those provisions, for which the parties have agreed to delay consideration until the Final Hearing, include:

- the "roll-up" providing that, on the Closing Date, for every \$1 of DIP Loans (1) that a given DIP Lender commits to under the DIP Loan Documents as of the Closing Date or (2) that a holder of Senior Secured Notes has, as of the Closing Date, irrevocably agreed to purchase from a DIP Lender who is not a holder of Senior Secured Notes, \$3 of Senior Secured Notes held by such DIP Lender or such holder of Senior Secured Notes will be converted into "Roll-Up Notes" which shall be (a) administrative claims allowed against each of the Debtors and their respective estates, (b) secured by the DIP Liens on the DIP Collateral, and (c) allowed DIP Super-Priority Claims in the entire outstanding amount of the obligations of the Roll-Up Notes;
- the extension of DIP Liens to Avoidance Action Proceeds;
- the waiver the Debtors' rights under section 506(c) of the Bankruptcy Code; and
- the exemption for the DIP Lenders and the Pre-Petition Secured Parties from the "equities of the case" exception to section 552(b) of the Bankruptcy Code.

60. The terms of the DIP Loan Documents, including the provisions described above, constitute, on the whole, the most favorable terms on which the DIP Lenders have agreed to extend the postpetition financing necessary to preserve Debtors' business as a going concern. Although the Debtors explored whether the DIP Lenders would provide the DIP Facility without such provisions, in the course of negotiations, the DIP Lenders made clear that they would not be willing to provide the DIP Facility without such terms. In particular, the Debtors understand that the "roll-up" provision is a key component of consideration for the DIP Lenders without which they are unwilling to provide the DIP Facility.

61. Notwithstanding the Creditors' Committee's reservations, the Debtors and their advisors believe, in exercise of their sound business judgment, that the terms of the DIP Facility, including the above-noted provisions, were and remain superior to any other set of terms reasonably available to the Debtors. The DIP Facility benefits the Debtors' estates, creditors and other parties in interest, and the estates as a whole are best served by the Debtors' entering into the DIP Loan Documents. Courts in other chapter 11 cases have approved roll-ups and similar provisions where such provisions, among the other terms of proposed debtor-in-possession financing, represented the best terms available. *See, e.g., In re Friendly Ice Cream Corp.*, Case No. 11-13167 (KG) (Bankr. D. Del. Nov. 2, 2011) (providing for prepetition debt roll-up); *In re Borders Grp., Inc.*, Case No. 11-10614 (MG) (Bankr. S.D.N.Y. Mar. 16, 2011) (providing for repayment of prepetition obligations with proceeds of postpetition financing); *In re Walking Co.*, Case No. 09-15138 (RR) (Bankr. C.D. Cal. Jan. 14, 2010) (providing for partial roll-up of prepetition obligations); *In re Gen. Growth Props.*, Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 14, 2009) (providing for repayment of prepetition obligations with proceeds of postpetition financing); *In re Chemtura Corp.*, No. 09-11233 (REG) (Bankr. S.D.N.Y. April 29, 2009) (approving dollar-for-dollar roll-up of \$86.5 million of prepetition secured indebtedness); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Mar. 1, 2009) (providing for prepetition debt roll-up); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009) (providing for roll-up of certain letters of credit).

C. Modification of the Automatic Stay Is Warranted

62. The DIP Loan Documents and the proposed Interim Order contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default (as such term is defined in the DIP Credit Agreement), all

rights and remedies provided for in the DIP Credit Agreement, and to take various other actions without further order of or application to the Court. Pursuant to Section 3 of the Guidelines, the Debtors are required to notify the Court of provisions modifying the automatic stay or terminating use of Cash Collateral upon an event of default. As described above, the Interim Order provides that the automatic stay is modified to permit the Pre-Petition Secured Parties to enforce remedies against the DIP Collateral without providing at least seven days' notice. In addition, the Interim Order provides that the DIP agent may terminate the Debtors' use of Cash Collateral immediately upon the occurrence of an Event of Default, without providing at least three days' notice.

63. The Debtors believe that the provisions of the Interim Order permitting the Pre-Petition Secured Parties to enforce remedies against the Pre-Petition Collateral and terminate or restrict the Debtors' use of Cash Collateral are justified under the circumstances. The Debtors and the Pre-Petition Secured Parties negotiated in good faith regarding the Debtors' consensual use of Cash Collateral. The Pre-Petition Secured Parties expressed concern regarding the inherent unpredictability of in-court chapter 11 proceedings and requested the notice terms described above as a condition to the Debtors' consensual use of Cash Collateral. The Debtors would be unable to fund these chapter 11 cases and ongoing operations without the use of Cash Collateral and wished to avoid costly and time-consuming contested cash collateral proceedings at the outset of these chapter 11 cases. Accordingly, the Debtors agreed to the notice terms and submit that they are justified under the circumstances.

64. Stay modification provisions are ordinary features of DIP facilities and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g., In re Hostess Brands, Inc.*, Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Feb. 3, 2012); *In re United Retail*

Inc., Case No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb. 2, 2012); *In re MSR Resort Golf Course LLC*, No. 11-10372 (Bankr. S.D.N.Y. Jan. 25, 2012); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011); *In re Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011); *In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010); *In re Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 6, 2009); *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009); *In re Gen. Growth Prop. Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 23, 2009); *In re Wellman, Inc.*, Case No. 08-10595 (Bankr. S.D.N.Y. Apr. 7, 2008); *In re Musicland Holding Corp.*, Case No. 06-10064 (Bankr. S.D.N.Y. Feb. 21, 2006).

IV. The DIP Lenders Should be Deemed Good Faith Lenders under Section 364(e) of the Bankruptcy Code

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

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

11 U.S.C. § 364(e).

66. As explained herein and in the Snyder Declaration, and in accordance with section 2 of the Guidelines, the DIP Loan Documents are the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain needed postpetition financing, and of extended arm's-length, good faith negotiations between the Debtors and the DIP Lenders. The terms and conditions of the DIP Loan Documents are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

V. The Debtors Require Immediate Access to the Cash Collateral and DIP Facility

67. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2) and (c)(2).⁵ In examining requests for interim relief under this rule, courts in this jurisdiction generally apply the same business judgment standard applicable to other business decisions. *See, e.g., Ames Dep't Stores*, 115 B.R. at 36.

68. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtors to use the Cash Collateral and to borrow up to \$15 million under the DIP Loan Documents, is not granted promptly. The Debtors believe that the commencement of these chapter 11 cases has already and will continue

⁵ *See also* Guidelines § 6 (requiring financing motion to describe the immediate or irreparable harm that may be caused to the estate if interim relief is not granted).

to significantly increase the demands on their free cash as a result of, among other things, the costs of administering these chapter 11 cases and addressing key constituents' concerns regarding the Debtors' financial health and ability to continue operations in light of these chapter 11 cases. Indeed, as explained in the Snyder Declaration, unless the Court approves the Debtors' interim access to the DIP Facility funds, there is a distinct possibility that the Debtors will run out of cash in the coming weeks. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, permit the orderly continuation of the operation of their business, to maintain business relationships with aircraft and equipment lessors, vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest.

69. The importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized in similar circumstances. *See, e.g., In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010); *In re Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Aug. 26, 2009); *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009); *In re Gen. Growth Prop. Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Jan. 13, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 8, 2009); *In re Lenox Sales, Inc.*, Case No. 08-14679 (S.D.N.Y. Nov. 25, 2008); *In re Wellman, Inc.*, No. 08-10595 (S.D.N.Y. Feb. 27, 2008). Accordingly, for all of the reasons set forth above, prompt entry of

the Interim Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

Request for a Final Hearing

70. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court (a) schedule the Final Hearing on March 14, 2012, and (b) fix the time and date for parties to file objections to the motion in advance of the Final Hearing.

Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order

71. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), 7062, 9014, or otherwise.

Motion Practice

72. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have given notice of this motion to all entities believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1.

Notice

73. The Debtors have provided notice of this motion to: (a) the United States Trustee for Region 2; (b) counsel to the Committee; (c) the indenture trustee for the first lien noteholders; (d) counsel to the ad hoc committee of first lien noteholders; (e) counsel to the holder of the second lien term loan; (f) counsel to the petition equityholders; (g) the International Brotherhood of Teamsters; (h) the Airline Pilots Association; (i) The Transport Workers Union of America AFL-CIO; (j) the New York Department of Taxation and Finance; (k) the New York

City Department of Finance; (l) the United States Attorney for the Eastern District of New York; (m) the Internal Revenue Service; and (n) the Securities and Exchange Commission. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

74. Other than the Debtors' motion requesting the relief granted in the Interim Cash Collateral Order, no prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and the First Day Declaration and the Snyder Declaration, the Debtors respectfully request entry of the Interim Order and the Final Order granting the relief requested herein and such other relief as may be appropriate under the circumstances.

Brooklyn, New York
Dated: February 24, 2012

/s/ Jonathan S. Henes, P.C.

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Proposed Counsel to the Debtors
and Debtors in Possession

Exhibit A

Interim Order

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

GLOBAL AVIATION HOLDINGS INC., *et al.*,

Case Nos. 12-40783 (CEC)
12-40782 (CEC)
12-40784 (CEC)
12-40785 (CEC)
12-40786 (CEC)
12-40787 (CEC)
12-40788 (CEC)
12-40789 (CEC)
12-40790 (CEC)

Debtors.

Jointly Administered

INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362 AND 364, AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS; (III) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

Global Aviation Holdings Inc. (the “*Borrower*”) and certain of its affiliates, each as a debtor and debtor-in-possession (collectively, with the Borrower, the “*Debtors*”) in the above captioned chapter 11 cases (collectively, the “*Cases*” and each of the Cases upon either appointment of any trustee or any other estate representative or conversion to a case under chapter 7 of the Bankruptcy Code (as defined below) and any other proceedings related to the Cases, a “*Successor Case*”) having filed a motion, dated February 24, 2012 (the “*Motion*”), requesting entry of an interim order (this “*Interim Order*”) pursuant to sections 105, 361, 362, 363, 364, and 507 of chapter 11 of title 11 of the United States Code (as amended, the “*Bankruptcy Code*”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and the Local Bankruptcy Rules for the Eastern District of New York (the “*Local Rules*”) seeking, among other things:

(i) authorization for the Borrower to obtain loans under the DIP Facility (as defined below), and for certain the Guarantors (as defined below) to guaranty the Borrowers' obligations in connection with the DIP Facility, up to the aggregate principal amount of \$15 million on an interim basis, from the DIP Agent (as defined below) and the DIP Lenders (as defined below);

(ii) approval of the terms of, and authorization for the Debtors to execute and perform under, the DIP Credit Agreement and the other Loan Documents (each as defined below) and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(iii) authorization for the Debtors to grant, subject to the Carve-Out (as defined below) (x) to the DIP Agent, for the benefit of itself and the other DIP Lenders, the DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, which DIP Liens shall be senior to the Primed Liens (as defined below) but shall be junior to any Permitted Prior Liens and (y) to the DIP Agent and the DIP Lenders, pursuant to section 364(c)(1) of the Bankruptcy Code, super-priority administrative claims having recourse to all pre-petition and post-petition property of the Debtors' estates, now owned or hereafter acquired, and any Debtors' rights under section 506(c) of the Bankruptcy Code (subject to entry of the Final Order) and the proceeds thereof;

(iv) authorization for the Debtors to use Pre-Petition Collateral (as defined below), including, without limitation, "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "*Cash Collateral*"), in which the Indenture Trustee (as defined below) and the Second Lien Agent (as defined below) have a Lien or other interest, whether existing on the Commencement Date (as defined below), arising pursuant to this Interim Order or otherwise;

(v) authorization for the Debtors to grant, as of the Commencement Date and in accordance with the relative priorities set forth herein, certain adequate protection to the Indenture Trustee, the Senior Noteholders (as defined below), the Second Lien Agent, and the Second Lien Lenders (as defined below);

(vi) to vacate the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order and subject in all respects to the Debtors' rights under paragraph 16 herein;

(vii) authorization for the Debtors, at any time prior to the entry of the Final Order, to borrow under the DIP Facility for the purposes of funding the operations of the Debtors' businesses, paying certain transaction fees and expenses and other costs and expenses of administration of the Cases, all subject to, and in accordance with, the DIP Loan Documents, this Interim Order and the Approved Budget (as defined below);

(viii) the scheduling of a final hearing (the "***Final Hearing***") to be held before this Court to consider entry of a final order (the "***Final Order***") approving (a) the DIP Facility as set forth in the DIP Credit Agreement in the aggregate principal amount of \$45 million on a final basis, to be used by the Debtors for the purpose of funding the operations of the Debtors' businesses and paying other costs and expenses of administration of the Cases in accordance with the DIP Loan Documents, the Final Order and the Approved Budget and (b) the grant of adequate protection to the Indenture Trustee, the Senior Noteholder Group and the Second Lien Agent all on a final basis as set forth in the DIP Motion; and

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

Having considered the Motion, the DIP Credit Agreement, the the *Declaration of Todd R. Snyder, Senior Managing Director of Rothschild Inc., In Support Of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing and to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief*, and the evidence submitted or proffered at the hearing held and concluded before this Court on February 28, 2012 (the "***Interim Hearing***"); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d) and 9014 and all applicable Local Rules, notice of the Motion and the Interim Hearing having been provided in a sufficient manner; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for maximizing the value of the Debtors' businesses and assets for the benefit of the Debtors' creditors and all parties in interests; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED¹, that:

A. **Commencement Date.** On February 5, 2012 (the "***Commencement Date***"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of New York (this "***Court***"). The Debtors have continued in the management and operation of their business and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On February 13, 2012, a committee of unsecured creditors (the "***Committee***") was appointed in these Cases.

¹ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

No trustee, or examiner has been appointed in the Cases. On February 6, 2012, this Court entered an order [ECF No. 30] directing joint administration of these Cases.

B. **Interim Cash Collateral.** On February 6, 2012, this Court also entered the *Interim Order Approving Debtors' Motion for Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, (III) Scheduling Further Hearings, and (IV) Granting Related Relief* (the "***Interim Cash Collateral Order***") [ECF No. 32] approving the Debtors' interim use of cash collateral, thereby enabling the Debtors to operate their business in the ordinary course and providing the time necessary for the Debtors' to negotiate and obtain approval and adequate postpetition financing.

C. **Jurisdiction and Venue.** This Court has core jurisdiction over the Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rule 4001-5.

D. **Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, on February 24, 2012, to certain parties in interest, including: (a) the United States Trustee for Region 2; (b) Latham & Watkins, LLP, as counsel to that certain group of Senior Noteholders holding in aggregate more than 66 ^{2/3}% in amount of the Senior Secured Notes, (the "***Senior Noteholder Group***"); (c) [Thompson Hine LLP, as counsel to the Indenture Trustee for the first lien noteholders;] (d) Wachtell, Lipton, Rosen & Katz, as counsel to the

Second Lien Lenders; (e) counsel to the prepetition equityholders; (f) Lowenstein Sandler PC as counsel to the Committee, (g) the International Brotherhood of Teamsters; (j) the Airline Pilots Association; (h) The Transport Workers Union of America AFL-CIO; (i) the New York Department of Taxation and Finance; (j) the New York City Department of Finance; (k) the United States Attorney for the Eastern District of New York; (l) the Internal Revenue Service; and (m) the Securities and Exchange Commission. Under the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules.

E. **Debtors' Stipulations Regarding the Pre-Petition Credit Facilities.** Without prejudice to the rights of parties in interest to the extent set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge and agree (paragraphs E(i) through E(vii) hereof shall be referred to herein collectively as the "***Debtors' Stipulations***") as follows:

(i) **Senior Notes Indenture.** Pursuant to that certain Indenture, dated as of August 13, 2009 among Global Aviation Holdings Inc. ("***Holdings***"), North American Airlines, Inc. and World Airways, Inc. as Issuers, the Guarantors named therein and Wells Fargo Bank, National Association acting as trustee and collateral agent (the "***Indenture Trustee***") (the "***Senior Notes Indenture***") and, together with all other loan and security documents executed in connection therewith, the "***First Lien Credit Documents***") the holders (the "***Senior Noteholders***") of those certain 14% Senior Secured First Lien Notes due 2013 (the "***Senior Secured Notes***") extended loans to the Debtors. All obligations of the Debtors arising under the Senior Notes Indenture including the "Obligations" as defined in the Senior Notes Indenture shall collectively be referred to herein as the "***First Lien Obligations.***"

(ii) Second Lien Credit Facility. Pursuant to a second lien credit facility (the “**Second Lien Credit Facility**”) under that certain Second-Lien Term Loan Credit Agreement dated as of September 29, 2009 (as supplemented or otherwise modified from time to time, the “**Second Lien Credit Agreement**”) and, together with all other loan and security documents executed in connection therewith, the “**Second Lien Credit Documents**” and together with the First Lien Credit Documents, the “**Pre-Petition Credit Documents**”), among Holdings, North American Airlines, Inc. and World Airways, Inc., as borrowers, the Guarantors party thereto, the Lenders party thereto (the “**Second Lien Lenders**”) and Wells Fargo Bank, National Association as administrative agent for the Second Lien Lenders and collateral agent for the Secured Parties (as defined in the Second Lien Credit Agreement) (the “**Second Lien Agent**” and together with the Senior Noteholders, the Indenture Trustee and the Second Lien Lenders, the “**Pre-Petition Secured Parties**”), the Second lien Lenders extended loans to the Debtors in connection with the Second Lien Credit Facility. All obligations of the Debtors arising under the Second Lien Credit Facility including the “Loan Obligations” as defined in the Second Lien Credit Agreement, shall be referred to herein as the “**Second Lien Credit Obligations**,” and together with the First Lien Obligations shall collectively be referred to herein as the “**Pre-Petition Credit Obligations.**”

(iii) Pre-Petition Credit Obligations. As of the Commencement Date, the Debtors were truly and justly indebted to the (a) Senior Noteholders pursuant to the First Lien Credit Documents, without defense, counterclaim or offset of any kind, in respect of loans made by the Senior Noteholders in the aggregate principal and accrued and unpaid interest amount of not less than \$[156.2] million in respect of the Senior Secured Notes *plus* any additional fees and expenses (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees and expenses that are chargeable or reimbursable under the First Lien Credit Documents) now or

hereafter due under the Senior Notes Indenture and the other First Lien Credit Documents and (b) to the Second Lien Lenders pursuant to the Second Lien Credit Documents, without defense, counterclaim or offset of any kind, in respect of loans made by the Second Lien Lenders in the aggregate principal amount of not less than \$86,793,726.44 in respect of the Loans (as defined in the Second Lien Credit Agreement) *plus* all accrued and unpaid interest (including payment-in-kind interest) thereon and any additional fees (including a \$6.0 million amendment fee) and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Second Lien Credit Documents) now or hereafter due under the Second Lien Credit Agreement and the other Second Lien Credit Documents.

(iv) Pre-Petition First Liens and Collateral. Pursuant to the First Lien Credit Documents, the Debtors granted to the Indenture Trustee, for the benefit of the Senior Noteholders, to secure the First Lien Obligations, a first-priority security interest in and continuing lien (the "***Pre-Petition First Priority Liens***") on all or substantially all of the Debtors' assets and property (which for the avoidance of doubt includes Cash Collateral and "Collateral" as defined in the Senior Notes Indenture) and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the "***Pre-Petition First Lien Collateral***"). As of the Commencement Date, the Pre-Petition First Priority Liens (a) are legal, valid, binding, enforceable, non-avoidable and perfected liens, (b) were granted to, or for the benefit of, the Senior Noteholders for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Pre-Petition First Priority Liens are subject and subordinate in all respects only to valid, prior, perfected and non-

avoidable Permitted Liens (as defined in the Senior Note Indenture) permitted under the Pre-Petition Credit Documents only to the extent that such liens are senior to the Pre-Petition First Priority Liens (after giving effect to any applicable intercreditor or subordination agreement) (the “*Permitted Prior Liens*”)². The First Lien Obligations and the First Lien Credit Documents constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable First Lien Credit Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code). No setoffs, recoupments, offsets, defenses or counterclaims to any of the First Lien Obligations exist and no portion of the First Lien Obligations or any payments made to any or all of the Indenture Trustee or the other Senior Noteholders are subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Each of the guaranties provided pursuant to the First Lien Credit Documents continues in full force and effect notwithstanding any use of Cash Collateral permitted hereunder.

(v) Pre-Petition Second Liens and Collateral. Pursuant to the Second Lien Credit Documents, the Debtors granted to the Second Lien Agent, for the benefit of the Second Lien Lenders, to secure the Second Lien Credit Obligations, a second-priority security interest in and continuing lien (the “*Pre-Petition Second Priority Liens*” and together with the Pre-Petition First Priority Liens, the “*Pre-Petition Liens*”) on all or substantially all of the Debtors’ assets and property (which for the avoidance of doubt includes Cash Collateral and “Collateral” as defined in the Second Lien Credit Agreement) and all proceeds, products, accessions, rents and profits

² For purposes of this Interim Order, Permitted Prior Liens shall include any liens that were valid, senior, enforceable, prior, perfected and non-avoidable under applicable law as of the Commencement Date. Nothing herein shall constitute a finding or ruling by this Court that any such liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Indenture Trustee, the Second Lien Agent, the Pre-Petition Secured Parties and any Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such liens and/or security interests.

thereof, in each case whether then owned or existing or thereafter acquired or arising (the “*Pre-Petition Second Lien Collateral*” and together with the Pre-Petition First Lien Collateral, the “*Pre-Petition Collateral*”). As of the Commencement Date, the Pre-Petition Second Priority Liens (a) are legal, valid, binding, enforceable, non-avoidable and perfected liens, (b) were granted to, or for the benefit of, the Second Lien Agent for the benefit of the Second Lien Lenders for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Pre-Petition Second Priority Liens are subject and subordinate to the Pre-Petition First Priority Liens and the Permitted Prior Liens. The Second Lien Credit Obligations and the Second Lien Credit Documents constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Second Lien Credit Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code). No setoffs, recoupments, offsets, defenses or counterclaims to any of the Second Lien Credit Obligations exist and no portion of the Second Lien Credit Obligations or any payments made to any or all of the Second Lien Agent or the other Second Lien Lenders are subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Each of the guaranties provided pursuant to the Second Lien Credit Documents continues in full force and effect notwithstanding any use of Cash Collateral permitted hereunder.

(vi) Cash Collateral. The Debtors represent that all of the Debtors’ cash, including the cash in its deposit accounts, wherever located, whether Pre-Petition Collateral or proceeds thereof, constitutes the Cash Collateral of the Pre-Petition Secured Parties.

(vii) Release of Claims. Each Debtor shall be deemed to have forever waived, discharged, and released the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the “*Pre-Petition Secured Party Releasees*”) of any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights against any and all of the Pre-Petition Secured Party Releasees, whether arising at law or in equity, with respect to the Pre-Petition Credit Obligations, the Pre-Petition Liens, including (a) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code, or under any other similar provisions of applicable state or federal law, and (b) any right or basis to challenge or object to the amount, validity, characterization or enforceability of the Pre-Petition Credit Obligations, or the validity, characterization, enforceability, priority, or non-avoidability of the Pre-Petition Liens.

F. **Findings Regarding the DIP Facility.**

(i) Need for Post-Petition Financing. The Debtors have an immediate need to obtain loans under the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs, and to facilitate the orderly liquidation of the Debtors’ businesses through one or more sales of substantially all of the Debtors’ assets. The Debtors’ access to sufficient working capital and liquidity through the use of Cash Collateral and

borrowing under the DIP Facility is vital to maximizing the value of the Debtors' assets and businesses for the benefit of the Debtors' creditors and parties in interest.

(ii) No Credit Available on More Favorable Terms. As set forth in the Motion and in the Snyder Declaration, the Debtors have been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Loan Documents. The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without (i) granting to the DIP Lenders the rights, remedies, privileges, benefits and protections provided herein and in the DIP Loan Documents, including the DIP Liens and the DIP Super-Priority Claims (as defined below) and (ii) allowing the Senior Noteholder Group to provide the DIP Facility on the terms set forth herein and in the DIP Loan Documents (all of the foregoing described in clauses (i) and (ii) above, including the DIP Liens and the DIP Super-Priority Claims, collectively, the "*DIP Protections*"), and (iii) providing the Indenture Trustee, the Senior Noteholders, the Second Lien Agent and the Second Lien Lenders the adequate protection more fully described in paragraphs 4 and 5 below.

G. Adequate Protection for, and Good Faith of, the Pre-Petition Agent and Pre-Petition Lenders. The Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties have negotiated in good faith regarding the Debtors' use of the Pre-Petition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses. The Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties have agreed to permit the Debtors to use the Pre-Petition Collateral, including the Cash Collateral, subject to the terms and conditions set

forth herein, including the protections afforded a party acting in “good faith” under section 364(e) of the Bankruptcy Code. In addition, the DIP Facility contemplated hereby provides for a priming of the Pre-Petition Liens pursuant to section 364(d) of the Bankruptcy Code. The Senior Noteholders, the Second Lien Agent and the other Pre-Petition Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, 364 and 507(b) of the Bankruptcy Code for the diminution in value of the Pre-Petition Collateral. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Cash Collateral contemplated hereby are fair and reasonable, reflect the Debtors’ prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties, none of whom has objected to the relief sought in this Interim Order.

H. **Limited Consent.** The Senior Noteholder Group has consented to the Debtors’ priming of their liens by the DIP Liens pursuant (and solely pursuant to) the terms of the DIP Facility presently before this Court, with Cantor Fitzgerald Securities as DIP Agent, and shall not, and shall not be deemed to, extend to any other post-petition financing or to any modified version of this DIP Facility. Nothing in this Interim Order, including any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of any of the Pre-Petition Secured Parties are or will be adequately protected with respect to any non-consensual use of Cash Collateral or non-consensual priming of the Pre-Petition Liens.

I. [Intentionally Deleted].

J. **Business Judgment and Good Faith Pursuant to section 364(e).**

(i) The DIP Lenders have indicated a willingness to provide post-petition secured financing pursuant to the DIP Facility to the Debtors in accordance with the DIP Loan Documents and this Interim Order.

(ii) The terms and conditions of the DIP Facility pursuant to the DIP Loan Documents and this Interim Order, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(iii) The DIP Facility and DIP Loan Documents were negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders with the assistance and counsel of their respective advisors, and all of the DIP Obligations shall be deemed to have been extended by the DIP Lenders and their affiliates for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Liens, the DIP Super-Priority Claims and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event this Interim Order or any other order or any provision hereof or thereof is vacated, reversed, amended or modified, on appeal or otherwise.

K. **Relief Essential; Best Interest.** For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2), 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors' businesses, assets and estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance

with this Interim Order and the DIP Loan Documents is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties.

NOW, THEREFORE, on the Motion and the record before this Court with respect to the Motion, and with the consent or non-objection of the Debtors, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Documents. This Interim Order shall become effective immediately upon its entry. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, are denied and overruled.

2. **DIP Loan Documents and DIP Protections.**

(a) **Approval of DIP Loan Documents.** The Debtors are expressly and immediately authorized to obtain post-petition financing (the "***DIP Facility***"), to execute, deliver and perform under that certain Senior Super-Priority Debtor-In-Possession Credit Agreement, dated as of March [___], 2012, substantially in the form attached as Exhibit B to the Motion, with Cantor Fitzgerald Securities acting as administrative agent (in such capacity, the "***DIP Agent***"), for itself and certain other lenders (collectively, the "***DIP Lenders***") (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***DIP Credit Agreement***"),³ and the other Loan Documents (as defined in the DIP Credit Agreement and, together with the DIP Credit Agreement, the "***DIP Loan Documents***") and to incur the DIP

³ Unless otherwise specified, all capitalized terms used herein without definition shall have the respective meanings given such terms in the DIP Credit Agreement.

Obligations (as defined below) in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver and perform under all other instruments, certificates, agreements and documents which may be required or necessary for the performance by the applicable Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in, and provided for by, this Interim Order and the DIP Loan Documents. The Debtors are hereby authorized, and, upon execution of the DIP Credit Agreement, directed, to do and perform all acts and pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Interim Order, including all closing fees, administrative fees, commitment fees and reasonable attorneys', financial advisors', and accountants' fees, and disbursements arising under the DIP Loan Documents and this Interim Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable; provided, however, that the payment of the fees and expenses of the Lender Professionals (as defined below) incurred after the Closing Date shall be subject to the provisions of paragraph 19. Upon their execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. Each Responsible Officer of a Debtor acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive of their respective authority to act in the name of and on behalf of the Debtors.

(b) DIP Obligations. For purposes of this Interim Order, the term “***DIP Obligations***” shall mean all amounts owing under the DIP Credit Agreement and the other DIP Loan Documents (including all “Obligations” as defined in the DIP Credit Agreement) and shall include the principal of, interest on and fees, costs, expenses and other charges owing in respect

of, such amounts (including any reasonable attorneys', accountants', financial advisors' and other fees, costs and expenses that are chargeable or reimbursable under the DIP Loan Documents), and any obligations in respect of indemnity and reimbursement claims, whether contingent or otherwise.

(c) Authorization to Incur DIP Obligations. To enable the Debtors to continue to operate their businesses, during the period from the entry of this Interim Order through and including the date of entry of the Final Order (the "***Interim Period***"), subject to the terms and conditions of this Interim Order, the DIP Loan Documents and the Approved Budget, the Debtors are hereby authorized to borrow under and pursuant to the terms of the DIP Facility in an aggregate outstanding principal amount not to exceed \$45 million. All DIP Obligations shall be unconditionally guaranteed by all of the other Debtors (collectively, the "***Guarantors***"), as further provided in the DIP Loan Documents. Following the expiration of the Interim Period, the Debtors' authority to request further borrowings under the DIP Facility and use further Cash Collateral will be governed by the terms of the Final Order (if entered) and the DIP Loan Documents.

(d) Approved Budget. Attached hereto as Exhibit A is a thirteen-week cash flow budget in form and substance satisfactory to the DIP Agent, the DIP Lenders and the Senior Noteholder Group (the "***Initial Approved Budget***") which reflects, on a line-item basis for such thirteen-week period, the Debtors' projected cash receipts and disbursements (including ordinary course operating expenses, bankruptcy-related expenses under the Cases, capital expenditures and fees and expenses of the DIP Lenders and the Senior Noteholder Group (including counsel, financial advisors and other professionals therefor)), and unrestricted cash on hand. The Initial Approved Budget, as it may be replaced in accordance with the provisions of this paragraph 3(a),

shall be the “Approved Budget.” Beginning on March [], 2012 (by 12:00 noon prevailing Eastern Time), and every second Tuesday thereafter (by 12:00 noon prevailing Eastern Time), the Debtors shall deliver to the DIP Lenders, the Senior Noteholder Group, the Second Lien Agent and the Committee an updated thirteen-week cash flow budget (each such updated budget, a “*Supplemental Budget*”). If and only if the DIP Agent, the DIP Lenders and the Senior Noteholder Group approve such Supplemental Budget, with such approval not to be unreasonably withheld where such Supplemental Budget is reasonably consistent with the then-existing Approved Budget (after taking into consideration the Debtors’ actual performance relative to the then-existing Approved Budget and any reasonably expected improvements in such performance), then such Supplemental Budget shall automatically become the Approved Budget without further notice, motion or application to, order of, or hearing before this Court and shall replace the prior Approved Budget in its entirety.

(e) Budget Covenants. For every one-week period commencing on February 27, 2012, and thereafter, tested by reference to the Variance Report each week, the aggregate expenditures and disbursements by the Debtors for each line item in the Approved Budget shall not exceed 15% of the corresponding line-item expenditures budgeted for such time period; provided, however, that any budgeted line-item expenditure for such one-week period may be increased by an amount equal to the unused portion of such corresponding budgeted line-item from the immediately preceding week, only to the extent that both weeks are the subject of the same Approved Budget then in effect and only during the time period in which such Approved Budget is then in effect. On Tuesday of each week (by 12:00 noon prevailing Eastern Time), the Debtors shall provide to the DIP Agent, the Senior Noteholder Group and the Second Lien Lenders a variance report (a “*Variance Report*”) in the form attached hereto as Exhibit B

with respect to the immediately prior week, setting forth (i) the actual cash receipts, expenditures and disbursements for such immediately preceding week on a line-item basis and available cash on hand as of the end of such week, (ii) the variance in dollar amounts of the actual expenditures and disbursements for each weekly period from those reflected for the corresponding period in the Approved Budget and (iii) a description of the nature of any positive or negative variance in excess of 5% in any line-item for each weekly period from what is reflected in the corresponding line-item for the corresponding period in the Approved Budget.

(f) Interest, Fees, Costs and Expenses. Except to the extent set forth in paragraph 2(h) below, the DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court. Subject to the provisions of paragraph 19 of this Interim Order, as applicable, the Debtors shall pay all fees, costs, expenses (including reasonable and documented legal and other professional fees and expenses of the DIP Agent and the DIP Lenders) and other charges payable under the terms of the DIP Loan Documents without regard to the amounts set forth with respect thereto in the Approved Budget. All such fees, costs, expenses and disbursements, whether incurred, paid or required to be paid pre-petition or post-petition, are hereby affirmed, ratified, authorized and payable (and any funds held by the DIP Agent the DIP Lenders and/or their professionals as of the Commencement Date for payment of such fees, costs, expenses and disbursements may be applied for payment) as contemplated in this Interim Order and the DIP Loan Documents filed with the Court, and shall be non-refundable.

(g) Use of DIP Facility Proceeds. Subject to the terms and conditions contained in this Interim Order and the DIP Loan Documents, from and after the Commencement Date, the Debtors are authorized to use borrowings under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents and subject to and in accordance with the Approved Budget. The Debtors shall be permitted to use the proceeds of the DIP Facility solely (i) as set forth in the Approved Budget and (ii) as authorized in other orders entered by the Court pursuant to motions, orders and requests for relief filed by the Debtors in each case, subject to and in accordance with the Interim Order or Final Order as applicable, the DIP Loan Documents and the Approved Budget.

(h) [Intentionally Deleted].

(i) Conditions Precedent. The DIP Lenders shall have no obligation to make any DIP Loan during the Interim Period unless and until all conditions precedent to the making of any such DIP Loan under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Agent and/or the DIP Lenders in accordance with the DIP Loan Documents and this Interim Order.

(j) DIP Liens. Subject to paragraph 18 herein and the Carve-Out, the Debtors hereby grant to the DIP Agent for its benefit and the ratable benefit of the DIP Lenders as security for the DIP Obligations, the following security interests and liens, which shall, immediately and without any further action, be valid, binding, permanent, fully perfected, continuing, enforceable and non-avoidable upon the date the Court enters this Interim Order (the “*DIP Liens*”), on substantially all of the property of the Debtors, now existing or hereinafter acquired, including all Cash Collateral, cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory,

goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, rights under section 506(c) (subject to entry of the Final Order) of the Bankruptcy Code, proceeds (“**Avoidance Action Proceeds**”) of the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (“**Avoidance Actions**”) (subject to entry of the final order), all other collateral and all other “property of the estate” (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, and all rents, products, substitutions, accessions, profits, replacements and cash and non-cash proceeds of all of the foregoing (all of the foregoing collateral collectively referred to as the “**DIP Collateral**,” and together with the Pre-Petition Collateral, the “**Collateral**”). The DIP Liens shall be comprised of the following:

i. First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable first priority Lien on all unencumbered DIP Collateral;

ii. Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable junior Lien on all DIP Collateral that is subject to any Permitted Prior Lien (whether existing immediately

prior to the Commencement Date or perfected on or after the Commencement Date pursuant to section 546(b) of the Bankruptcy Code); and

iii. Priming Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable first priority senior priming Lien on all DIP Collateral of the Debtors (including Cash Collateral) that is senior in all respects to (x) the Pre-Petition Liens and (y) except for the Permitted Prior Liens, any other liens in favor of any other person or entity, including all Liens junior to the Pre-Petition Liens (the "***Primed Liens***"), which Primed Liens, together with any Liens granted on or after the Commencement Date to provide adequate protection in respect of any of the Primed Liens, shall be primed by and made subject and subordinate to the DIP Liens; provided, however, that the Liens described in this clause (iii) shall be subject and subordinate to the Carve-Out and the Permitted Prior Liens.

(k) DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order or the other DIP Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Agent for the ratable benefit of the DIP Lenders shall in each and every case be first priority senior Liens that (i) are subject only to the Permitted Prior Liens and the Carve-Out, and (ii) except as provided in clause (ii) of this paragraph 2, are senior to all pre-petition and post-petition Liens of any other person or entity (including the Primed Liens and the Adequate Protection Replacement Liens (as defined below)). The DIP Liens and the DIP Super-Priority Claims (as defined below) (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with any intercompany or affiliate Liens of the Debtors, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in the Cases or in any Successor Case, and/or upon the dismissal of any of the Cases. Except as otherwise expressly permitted by this Interim Order or

the DIP Loan Documents, no claim or Lien having a priority superior to or *pari passu* with those granted by this Interim Order with respect to the DIP Obligations shall be granted or allowed until (x) all DIP Obligations have been indefeasibly paid in full in cash and (y) all commitments under the DIP Loan Documents have been irrevocably terminated.

(l) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the applicable Debtors, which DIP Obligations shall be enforceable against such Debtors, their estates and any successors thereto (including any trustee or other estate representative in any Successor Case), and their creditors, in accordance with their terms. No obligation, payment, transfer or grant of security under the Interim Cash Collateral Order, the DIP Credit Agreement, the other DIP Loan Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, 547, 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise) counterclaim, cross-claim, defense or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(m) Super-Priority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed super-priority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out, over all other administrative expense claims, adequate protection and other diminution claims (including the First Lien Super-Priority Claims and the Second Lien Super Priority Claims (each

as defined below)), unsecured claims and all other claims against the applicable Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503, 507, 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment (the “*DIP Super-Priority Claims*”). The DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof. Other than as provided in the DIP Credit Agreement and this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, 331 and 503 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no administrative priority claims or other priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens and the DIP Super-Priority Claims or the DIP Obligations, or with any other claims of the DIP Lenders arising hereunder.

3. **Authorization to Use Cash Collateral.** Subject to paragraph 7 herein, the terms and protections of the Interim Cash Collateral Order are hereby ratified and confirmed, except to the extent amended or modified by this Interim Order, and all payments made and protections provided thereunder for any party, including creditors of the Debtors, are ratified and confirmed and shall be deemed made or provided in accordance with this Interim Order. Subject to the terms and conditions of this Interim Order, the Debtors are authorized, pursuant to section 363 of

the Bankruptcy Code, to use the Cash Collateral for a period of time from the date hereof until the earliest to occur of (i) the termination of the commitments under the DIP Facility or the acceleration of the DIP Obligations as set forth in the DIP Credit Agreement, (ii) the date that this Interim Order ceases to be in full force and effect, (iii) immediately upon delivery of written notice to the Debtors and the Committee by the DIP Agent or its counsel of any breach or default by the Debtors of the terms and provisions of this Interim Order, which breach or default has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement; (iv) immediately upon delivery of written notice to the Debtors and the Committee by the DIP Agent or its counsel of an Event of Default under the DIP Credit Agreement, which Event of Default has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement; (v) the conversion of any of the Cases to a chapter 7 case; or (vi) appointment of a trustee or examiner with expanded powers. With the exception of payments to the Debtors' Professionals (as defined below) contemplated under the Carve-Out, each Debtor shall be prohibited from using Cash Collateral except in accordance with the terms and conditions of this Interim Order, the DIP Loan Documents and the Approved Budget, and nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside of the ordinary course of business or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order, the Final Order or the DIP Loan Documents.

4. **Adequate Protection for Pre-Petition Lenders.** In consideration for the use of Cash Collateral, the consent of the Senior Noteholder Group to the entry of this Interim Order and the priming of the Senior Noteholder Group's liens, claims and interests in the Pre-Petition Collateral (including Cash Collateral) from and after the Commencement Date, the Senior

Noteholders collectively shall receive the following adequate protection (collectively, the “***First Lien Adequate Protection***”):

(a) Replacement Liens. Subject to paragraph 18 herein to the extent of any diminution in value of the interests of the Senior Noteholders in the Pre-Petition First Lien Collateral, including, without limitation, the Cash Collateral, from and after the Commencement Date, the Indenture Trustee, for the benefit of itself and the other Senior Noteholders, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, shall receive replacement Liens upon all of the DIP Collateral (the “***First Lien Replacement Liens***”), which First Lien Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Permitted Prior Liens, and the Carve-Out, to the extent expressly provided in the DIP Loan Documents and this Interim Order.

(b) Super-Priority Claims. To the extent of any diminution in value of the pre-petition interests of the Senior Noteholders in the Pre-Petition First Lien Collateral, the Senior Noteholders are hereby granted allowed super-priority administrative claims (such as adequate protection super-priority claims, the “***First Lien Super-Priority Claims***”), pursuant to section 507(b) of the Bankruptcy Code, junior only to the DIP Super-Priority Claims and the Carve-Out to the extent provided herein and in the DIP Loan Documents, and which First Lien Super-Priority Claims shall otherwise have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, Sections 105, 326, 327, 328, 330, 503(b), 507(a) and (b), 546(c) 726, 1113 and 1114 of the Bankruptcy Code; provided, however, that the Senior Noteholders shall not receive or retain any payments, property or other amounts in respect of the First Lien Super-Priority Claims unless and until (x) all DIP Obligations and all payments

due under the Carve-Out have been indefeasibly paid in full in cash and (y) all credit commitments under the DIP Loan Documents have been irrevocably terminated. Subject to the relative priorities set forth above, the First Lien Super-Priority Claims against each Debtor shall be against each Debtor on a joint and several basis.

(c) Professional Fees. Without limiting any rights of the Indenture Trustee and the other Senior Noteholders under section 506(b) of the Bankruptcy Code which are hereby preserved, the Senior Noteholder Group shall receive current cash payment of fees and expenses due from time to time as more fully described in paragraph 19 below.

(d) Reporting Requirements. As further adequate protection, the Debtors shall deliver to the Senior Noteholder Group all information, reports, documents and other material that the Debtors provide to the DIP Lenders pursuant to the DIP Loan Documents.

(e) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Senior Noteholders. However, the Indenture Trustee and the Senior Noteholder Group may request Court approval for additional or alternative adequate protection, without prejudice to any objection of the Debtors or any other party in interest to the grant of any additional or alternative adequate protection; provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to the claims and Liens of the DIP Lenders granted under this Interim Order and the DIP Loan Documents.

5. **Adequate Protection For Second Lien Lenders.** In consideration for the use of Cash Collateral, the non-opposition of the Second Lien Agent to the entry of this Interim Order

and the priming of the Second Lien Agent's liens, claims and interests in the Pre-Petition Collateral (including Cash Collateral) from and after the Commencement Date, the Second Lien Lenders collectively shall receive the following adequate protection (collectively, the "***Second Lien Adequate Protection***") and together with the First Lien Adequate Protection, the "***Adequate Protection***"):

(a) Replacement Liens. Subject to paragraph 18 herein to the extent of any diminution in value of the interests of the Second Lien Agent and the Second Lien Lenders in the Pre-Petition Second Lien Collateral, including, without limitation, the Cash Collateral, from and after the Commencement Date, the Second Lien Agent, for the benefit of itself and the other Second Lien Lenders, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, replacement Liens upon all of the DIP Collateral such adequate protection replacement liens, the "***Second Lien Adequate Protection Replacement Liens***" and together with the First Lien Adequate Protection Replacement Liens, the "***Adequate Protection Replacement Liens***"). The Second Lien Adequate Protection Replacement Liens on such Second Lien Adequate Protection Collateral shall be subject and subordinate only to (i) the DIP Liens, (ii) the Pre-Petition First Priority Liens, (iii) the First Lien Adequate Protection Replacement Liens, (iii) the Pre-Petition Second Priority Liens and (iv) to the extent applicable, the Permitted Prior Liens.

(b) Super-Priority Claims. To the extent of any diminution in value of the pre-petition interests of the Second Lien Lenders in the Pre-Petition Second Lien Collateral, the Second Lien Agent and the Second Lien Lenders are hereby granted allowed super-priority administrative claims (such adequate protection super-priority claims, the "***Second Lien Super-Priority Claims***") and together with the First Lien Super-Priority Claims, the "***Super-Priority***

Claims”), pursuant to section 507(b) of the Bankruptcy Code, which Second Lien Super-Priority Claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, Sections 105, 326, 327, 328, 330, 503(b), 507(a) and (b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code or otherwise; provided, however, that the Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the First Lien Super-Priority Claims unless and until (x) all DIP Obligations and all payments due under the Carve-Out have been indefeasibly paid in full in cash, (y) all credit commitments under the DIP Loan Documents have been irrevocably terminated and (z) all of the First Lien Credit Obligations have been indefeasibly paid in full in cash.. Subject to the relative priorities set forth above, the Second Lien Super-Priority Claims against each Debtor shall be against each Debtor on a joint and several basis. The Second Lien Super-Priority Claims shall be subject and subordinate only to the (i) DIP Super-Priority Claims and (ii) the First Lien Super-Priority Claims.

(c) Reporting Requirements. Concurrent with the Debtors’ delivery of all reports and information to the Senior Noteholder Group and the Indenture Trustee pursuant to paragraph 4(d) above, the Debtors shall provide the Second Lien Lenders with a copy thereof.

6. Automatic Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the DIP Liens and the Adequate Protection Replacement Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the DIP Liens and the Adequate Protection Replacement Liens or to entitle the DIP

Liens and the Adequate Protection Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, the Indenture Trustee and the Second Lien Agent (solely with respect to the Adequate Protection Replacement Liens) may, each in its sole discretion, file financing statements, mortgages, security agreements, notices of Liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the Commencement Date. The applicable Debtors shall execute and deliver to the DIP Agent, the Indenture Trustee and the Second Lien Agent, as applicable, all such financing statements, mortgages, notices and other documents as such parties may reasonably request to evidence and confirm the contemplated priority of the DIP Liens and the Adequate Protection Replacement Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent, the Indenture Trustee and the Second Lien Agent, each in its discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. Subject to the entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other Collateral, is and shall be deemed to be inconsistent with the provisions of the

Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Loan Documents and this Interim Order. To the extent that the Indenture Trustee is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Pre-Petition Credit Document, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Pre-Petition Credit Document, shall have all rights and powers attendant to that position (including rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the DIP Loan Documents and this Interim Order. The Indenture Trustee shall serve as agent for the DIP Agent for purposes of perfecting their respective Liens on all DIP Collateral that is of a type such that perfection of a Lien therein may be accomplished only by possession or control by a secured party.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**

(a) The Debtors' Stipulations shall be binding upon the Debtors in all circumstances. The Debtors' Stipulations shall be binding upon each other party in interest, including the Committee and any trustee of the Debtors' estates appointed in these Cases, unless on or before April 28, 2012 (such time period shall be referred to as the "**Challenge Period**," and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the

“*Challenge Period Termination Date*”⁴, the Committee, any trustee of the Debtors’ estates appointed in these Cases, or other party in interest other than the Debtors obtains the authority to commence and commences, prior to the expiration of the Challenge Period, a contested matter or adversary proceeding (x) challenging or otherwise objecting to any part of the Debtors’ Stipulations, or (y) against any or all of the Indenture Trustee and the Second Lien Agent and/or the other Pre-Petition Secured Parties challenging any aspect of the Pre-Petition Credit Obligations, Pre-Petition Liens or the actions or inactions of any of the Indenture Trustee and the Second Lien Agent or the other Pre-Petition Secured Parties arising out of or related to the Pre-Petition Credit Obligations, or Pre-Petition Liens, including any claim against the Indenture Trustee, the Second Lien Agent or any other Pre-Petition Secured Party in the nature of “lender liability” causes of action, setoff, avoidance, counterclaim or defense to the Pre-Petition Credit Obligations (including but not limited to those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the “*Claims and Defenses*”) and (b) this Court rules in favor of the plaintiff in any such timely and properly commenced contested matter or adversary proceeding; provided, that as to the Debtors, for themselves and not their estates, all such Claims and Defenses are irrevocably waived and relinquished as of the Commencement Date. If no Claims and Defenses have been timely asserted in any such adversary proceeding or contested matter, then, upon the Challenge Period Termination Date, and for all purposes in these Cases and any Successor Case, (i) no payments made to the Indenture Trustee, the Second Lien Agent and the other Pre-Petition Secured Parties pursuant to this Interim Order, the Interim Cash Collateral Order or otherwise shall be subject to counterclaim, set-off, subordination,

⁴ TBD: second outside date to bring other kinds of challenges and causes of action not relating to validity and perfection of Pre-Petition Liens.

recharacterization, defense or avoidance, (ii) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred, (iii) the Pre-Petition Credit Obligations shall be deemed to be an allowed claim, and (iv) the Debtors' Stipulations, including the release provisions therein, shall be binding on all creditors and parties in interest, including the Committee and any subsequent trustee of the Debtors' estates in these Cases or in any Successor Case. Notwithstanding the foregoing, to the extent any Claims and Defenses are timely asserted in any such adversary proceeding or contested matter, (i) the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any party in interest, including the Committee or any subsequent trustee of the Debtors' estates in these Cases or in any Successor Case from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such adversary proceeding or contested matter, and (ii) any portion of the Debtors' Stipulations or other provision in clauses (i) through (iv) in the immediately preceding sentence that is the subject of a timely filed Claim and Defense shall become binding and preclusive on the Committee (and any subsequent trustee of the Debtors' estates in these Cases or any Successor Case) and or any other party in interest to the extent set forth in any order of the Court resolving such Claim and Defense. Nothing in this Interim Order vests or confers on any person or entity, including the Committee, standing or authority to pursue any cause of action belonging to any or all of the Debtors or their estates, including any Claim and Defense or other claim against the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or any other Pre-Petition Secured Party, and the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second

Lien Agent and the other Pre-Petition Secured Parties reserve all rights to challenge and object to such standing or authority; provided, however, that the Committee shall be entitled to an emergency hearing, upon two business days' notice and at the earliest possible time permitted on the Court's calendar, to present, by oral motion or otherwise, its request for standing to pursue a cause of action belonging to any or all of the Debtors or their estates, including any Claim or Defense, and, while such emergency hearing is pending, the expiration of the Challenge Period shall be tolled.

(b) The Court reserves the right, after notice and a hearing, to unwind any payments made to the Senior Noteholder Group in the event that any Claims or Defenses brought within the Challenge Period are found to have successfully challenged the validity, enforceability, extent, perfection or priority of any of the Indenture Trustee or the Senior Noteholder Group's claims and/or Liens. For the avoidance of doubt, to the extent the Court unwinds any payments to the Senior Noteholder Group as set forth in the preceding sentence, then the Pre-Petition First Lien Obligations in respect of which such payments were made shall be reinstated in full force and effect and all guarantees and security in respect thereof shall be restored.

8. **Carve-Out**. Subject to the terms and conditions contained in this paragraph 8, each of the DIP Liens, DIP Super-Priority Claims, the Pre-Petition Liens, the Adequate Protection Replacement Liens and the Super-Priority Claims shall be subject and subordinate in all respects to payment of the Carve-Out (as defined below):

(a) For purposes of this Interim Order, "***Carve-Out***" means (i) all unpaid fees required to be paid in these Cases to the Clerk of the Court and to the office of the United States Trustee under 28 U.S.C. § 1930 and 31 U.S.C. § 3717, whether arising prior to or after the

delivery of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees, costs, disbursements and expenses (the “*Debtor Professional Fees*”) of professionals retained by the Debtors in these Cases (collectively, the “*Debtors’ Professionals*”) that are incurred and earned prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any retainers and any available funds remaining in the Debtors’ estates for such creditors; (iii) all reasonable and documented unpaid fees and expenses (the “*Committee Professional Fees*” and together with the Debtor Professional Fees, the “*Professional Fees*”) of professionals retained by the Committee in these Cases (collectively, the “*Committee’s Professionals*”) and all reasonable expenses of any member of the Committee that are incurred and earned prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under sections 105(a), 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any available funds remaining in the Debtors’ estates for such creditors; (iv) all reasonable and documented unpaid fees, costs, disbursements and expenses of the Debtors’ Professionals and Committee’s Professionals that are incurred and earned on or after the first business day after the delivery by the Senior Noteholder Group of a Carve-Out Trigger Notice, that are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise and remain unpaid after application of any retainers and any available funds remaining in the Debtors’ estates for such creditors and in an aggregate amount not to exceed \$1.9 million (the “*Carve-Out Cap*”) (plus all unpaid fees, costs, disbursements and expenses of the Debtors’

Professionals and Committee's Professionals allowed by this Court at any time that were incurred on or prior to the first business day following the delivery of the Carve-Out Trigger Notice); and (v) in the event of a conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professional retained by such trustee in an aggregate amount not to exceed \$200,000 (clauses (i) through (v), collectively, the "*Carve-Out*"); provided, however, that immediately upon either (A) the delivery of a Carve-Out Trigger Notice or (B) termination of the DIP Facility and the Debtors' authority to use Cash Collateral, but only if such termination occurs prior to the effective date of any plan of liquidation, the Debtors shall immediately fund into a segregated account established by the Debtors (the "*Carve-Out Account*") an amount equal to the aggregate amount accrued under the Carve-Out prior to the delivery of the Carve-Out Trigger Notice, plus the amount of the Carve-Out Cap. If there are insufficient funds on the date the Carve-Out Trigger Notice is delivered to fund the full amount of the Carve-Out, including the Carve-Out Cap, into the Carve-Out Account, any additional cash proceeds thereafter received by the Debtors, from whatever source, shall be transferred by the Debtors into the Carve-Out Account prior to making any distributions to creditors. All funds in the Carve-Out Account shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out in subsection (a), above, and then, to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth in subsection (a), above. All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Liens, the Pre-Petition Liens and Adequate Protection Replacement Liens such that, upon final payment of all allowed amounts due and owing under the Carve-Out, including the Carve-Out Cap, as determined by further order of the Court, any funds remaining in the Carve-Out Account shall be remitted to the Debtors and governed by the terms of this

Interim Order. Notwithstanding anything to the contrary in this Interim Order, all liens and claims granted pursuant to the Interim Order, as well as all liens and claims granted pursuant to any Pre-Petition Credit Obligations, shall be subject to the Carve-Out. The term “*Carve-Out Trigger Notice*” shall mean a written notice delivered by the DIP Agent or its counsel to the Debtors’ lead counsel, the U.S. Trustee, counsel to the Second Lien Lenders and lead counsel to the Committee appointed in these Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that the Carve-Out is invoked.

(b) Any payments actually made pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503 or 1103 or otherwise to Debtors’ Professionals or Committee’s Professionals shall (i) in the case of the Debtors’ Professionals only, not be paid from the proceeds of any DIP Collateral, Adequate Protection Collateral, Pre-Petition Collateral or Cash Collateral until such time as all retainers, if any, held by such Debtors’ Professionals or the Committee’s Professionals have been reduced to zero and (ii) in the case of any payments made on account of any fees and expenses described in clause (iv) of the definition of Carve-Out, reduce the applicable Carve-Out Cap on a dollar-for-dollar basis. So long as no Carve-Out Trigger Notice has been delivered, the Debtors shall be permitted to pay the Professional Fees, allowed and payable under 11 U.S.C. 328, 330 or 331, as the same may be due and payable. Any compensation and expenses previously paid, or accrued but unpaid, prior to the delivery of the Carve-Out Trigger Notice and any fees, expenses, indemnities or other amounts paid to the DIP Secured Parties, the Pre-Petition Secured Parties or such party’s respective attorneys and agents under the Pre-Petition Credit Obligations or otherwise, shall not reduce the Carve-Out Cap.

(c) So long as no Carve-Out Trigger Notice has been delivered to the Debtors, the Debtors are authorized to use advances under the DIP Facility, in accordance with and limited to the amounts set forth on the Approved Budget, on a cumulative basis by Debtor Professional or Committee Professional, as applicable, to pay such compensation and expense reimbursements of the Debtors' Professionals and the Committee's Professionals as the same may be due and payable (but regardless of when such compensation and reimbursement of expenses are so allowed).

(d) No portion of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) the Liens or claims of any or all of DIP Agent and/or the DIP Lenders, the Pre-Petition Liens of the Indenture Trustee the Second Lien Agent, and/or the Pre-Petition Secured Parties or the initiation or prosecution of any claim or cause of action (including any Claims and Defenses) against any or all of DIP Agent or the DIP Lenders, including any claim under Chapter 5 of the Bankruptcy Code or (ii) any claims or causes of actions (including any Claims and Defenses and any claims or causes of action under Chapter 5 of the Bankruptcy Code) against any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors and employees, including formal discovery proceedings in anticipation thereof, and/or challenging any Lien or claim of any or all of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties, or asserting any other lender liability or other claim or cause of action against any of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties. The

foregoing notwithstanding, no more than \$50,000, in the aggregate, of the amounts set forth in the Approved Budget, the Carve-Out, DIP Collateral, Cash Collateral or any proceeds of the DIP Facility may be used by the Committee, or any representative of the estates, to investigate, but not prosecute or prepare to prosecute any challenge to, the claims and/or liens of the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent or the other Pre-Petition Secured Parties under the Pre-Petition Credit Documents.

(e) Furthermore, none of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility shall be used to prevent, hinder or delay the DIP Lenders or the DIP Agent from enforcing or realizing upon the DIP Collateral once a Default or Event of Default has been determined by the Court to have occurred and to be continuing under the DIP Loan Documents or this Interim Order.

(f) Nothing herein shall be construed as consent to the allowance of any Debtor Professional Fees, Committee Professional Fees or the professional fees or expenses of any unofficial committee or any other party in interest, or shall affect the right of the DIP Agent, any DIP Lender, or the other Pre-Petition Secured Parties to object to the allowance and payment of such fees and expenses.

(g) The DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties shall not be responsible for the direct payment or reimbursement of any Debtor Professional Fees or Committee Professional Fees incurred in these Cases or any Successor Case. Nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties in any way to pay compensation or to reimburse expenses of any of the

Debtors' Professionals or the Committee's Professionals or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if the actual Debtor Professional Fees or Committee Professional Fees are higher than reflected in the Approved Budget; or (iii) as consent to the allowance of any Professional Fees. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

9. **Credit Bid.** (a) The DIP Agent shall have the unqualified right to credit bid the DIP Obligations under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code.

(b) Provided that the DIP Obligations have been repaid in full and cash and the DIP Credit Agreement terminated, or will be repaid in full in cash and terminated pursuant to the terms of such sale, then following the later of (i) the Challenge Period Termination Date or (ii) if, prior to the Challenge Period Termination Date, the Committee timely asserts any Claims and Defenses in any adversary proceeding or contested matter, the date on which the Pre-Petition First Priority Liens and First Lien Obligations are determined by final order to be valid, binding and enforceable, the Indenture Trustee shall have the unqualified right to credit bid up to the full amount of any First Lien Obligations in any sale of the Pre-Petition Collateral, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy

Code. The Debtors, on behalf of themselves and their estates, stipulate and agree that any sale of all or part of the Collateral that does not include an unqualified right to credit bid up to the full amount of the value of Pre-Petition First Lien Credit Obligations would mean that the Senior Noteholders will not receive the indubitable equivalent of their claims and interests.

10. [Intentionally Deleted].

11. **Discharge Waiver**. The Debtors expressly stipulate, and the Court finds and adjudicates that, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of sections 524 and/or 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been indefeasibly paid in full in cash on or before the effective date of a confirmed plan of reorganization.

12. **Protection of DIP Lenders' Rights**.

(a) Unless the DIP Agent and the Required Lenders shall have provided their prior written consent or all DIP Obligations have been indefeasibly paid in full in cash and the DIP Credit Agreement terminated, there shall not be entered in these proceedings or in any Successor Case any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, DIP Super-Priority Claims and other DIP Protections granted pursuant to this Interim Order; or (ii) the use of DIP proceeds for any purpose other than as permitted in accordance with the Approved Budget, the DIP Loan Documents and this Interim Order.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will (i) maintain books, records and accounts to the extent and as

required by the DIP Loan Documents, (ii) reasonably cooperate, consult with, and provide to the DIP Agent and the DIP Lenders all such information as required or allowed under the DIP Loan Documents or the provisions of this Interim Order, (iii) permit representatives of the DIP Agent and the Pre-Petition Secured Parties such rights to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of the Debtors' respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with their respective officers, employees and independent public accountants as and to the extent required by the DIP Loan Documents, and (iv) permit the DIP Agent and the Senior Noteholder Group and their respective representatives to consult with the Debtors' management and advisors on matters concerning the general status of the Debtors' businesses, financial condition and operations.

13. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 12 above, if at any time prior to the indefeasible payment in full in cash of all DIP Obligations and the termination of the DIP Loans, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) or any other provision of the Bankruptcy Code in violation of the DIP Loan Documents or this Interim Order, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until indefeasible payment in full in cash of the DIP Obligations.

14. **Disposition of DIP Collateral.** The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written

consent of the DIP Agent and the Required Lenders (and no such consent shall be implied from any other action, inaction or acquiescence by any DIP Secured Party or any order of this Court), except for (a) as permitted in the DIP Loan Documents and this Interim Order and (b) approved by the Court to the extent required under applicable bankruptcy law.

15. **Events of Default.** The following shall constitute an event of default under this Interim Order, unless waived in writing by the DIP Agent and the Required Lenders under the DIP Loan Documents (the “*Events of Default*”):

(a) The occurrence of an “Event of Default” under the DIP Credit Agreement, as set forth therein.

(b) The Debtors propose or support of any plan of reorganization or sale of all or substantially all of the Debtors’ assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, on the effective date of such plan of reorganization or such sale, of all DIP Obligations.

(c) Any other breach or default by any of the Debtors of the terms and provisions of this Interim Order.

16. **Rights and Remedies Upon Event of Default.**

(a) Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Agent may, and at the written direction of the Required Lenders shall, (i)(1) declare all DIP Obligations to be immediately due and payable, (2) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and (3) terminate the DIP Facility and any other DIP Loan Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; and

(ii) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral (any such declaration shall be made in writing to the Debtors, the Committee and the U.S. Trustee, and shall be referred to herein as a “*Termination Declaration*” and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the “*Termination Declaration Date*”).

(b) In addition to the remedies described above and other customary remedies, five (5) days following the Termination Declaration Date, the DIP Agent shall have relief from the automatic stay and may foreclose on all or any portion of the DIP Collateral, collect accounts receivable and apply the proceeds thereof to the DIP Obligations, occupy the Debtors’ premises to sell or otherwise dispose of the DIP Collateral or otherwise exercise remedies against the DIP Collateral permitted by applicable non-bankruptcy law. During such five (5) day period, the Debtors and the Committee shall be entitled to an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court at such hearing determines that an Event of Default has not occurred and is not continuing, the automatic stay, as to the DIP Lenders and DIP Agent, shall automatically terminate at the end of such five (5) business day period, without further notice or order. Notwithstanding the foregoing, nothing herein shall preclude the DIP Agent from seeking an order from the Court authorizing the DIP Agent to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) days’ notice.

(c) All proceeds realized in connection with the exercise of the rights and remedies of the DIP Lenders shall be turned over to the DIP Agent for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Loan Documents and this Interim Order until indefeasible payment in full in cash of the DIP Obligations.

(d) Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent or the other DIP Lenders contained in this Interim Order or the DIP Loan Documents, or otherwise available at law or in equity, upon reasonable prior written notice to the Debtors and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or intellectual property that an Event of Default has occurred and is continuing, the DIP Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their businesses, in all cases without interference from lienholders or licensors thereunder, provided, however, that the DIP Agent, on behalf of the DIP Lenders, shall pay only rent and additional rent, fees, royalties or other obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that are payable during the period of such occupancy or use by such DIP Agent calculated on a *per diem* basis. Nothing herein shall require the Debtors, the DIP Agent or the other DIP Lenders to assume any lease or license under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the DIP Agent and the other DIP Lenders in this paragraph 16(d).

(e) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of this Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the

DIP Liens and to incur all liabilities and obligations to the Senior Noteholder Group, the Pre-Petition Secured Parties, the DIP Lenders under the DIP Loan Documents, the DIP Facility and this Interim Order, (ii) authorize the DIP Lenders and the other Pre-Petition Secured Parties to retain and apply payments hereunder, and (iii) as otherwise necessary to implement and effectuate the provisions of this Interim Order.

17. **Preservation of Rights Granted under the Interim Order.**

(a) No Non-Consensual Modification or Extension of Interim Order. Unless all DIP Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default, if there is entered (i) an order amending, supplementing, extending or otherwise modifying this Interim Order or (ii) an order converting or dismissing any of the Cases, in each case, without the prior written consent of the DIP Agent, which consent shall not be implied by any other action, inaction or acquiescence.

(b) Dismissal. If any order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) to the fullest extent permitted by law that (i) the DIP Protections and the Adequate Protection shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations have been indefeasibly paid in full in cash and all Adequate Protection has been indefeasibly paid in full in cash or otherwise satisfied in full (and that all DIP Protections and the Adequate Protection shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and the Adequate Protection.

(c) Modification of Interim Order. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur or stay shall affect (i) the validity, priority or enforceability of any DIP Protections and the Adequate Protection granted or incurred prior to the actual receipt of written notice by the DIP Agent or the Senior Noteholder Group, as the case may be, of the effective date of such reversal, modification, vacatur or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations and the Adequate Protection. Notwithstanding any such reversal, modification, vacatur or stay, any use of Cash Collateral or any DIP Obligations or Adequate Protection incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent or the Senior Noteholder Group, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lenders and the Pre-Petition Secured Parties shall be entitled to all of the DIP Protections and the Adequate Protection, as the case may be, and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the DIP Loan Documents with respect to all uses of Cash Collateral and all DIP Obligations and Adequate Protection.

(d) Survival of Interim Order. The provisions of this Interim Order, the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections, the Adequate Protection, and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to any or all of the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization in any Case, converting any Case to a case under chapter 7, dismissing any Case, withdrawal of the reference as to any Case or any Successor Case or providing for abstention from handling or retaining of jurisdiction of any Case in this Court, or terminating the joint administration of these Cases or by any other act or omission. The terms and provisions of this Interim Order, including all of the DIP Protections, Adequate Protection and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to any or all of the DIP Agent, the DIP Lenders, the Indenture Trustee, the Senior Noteholder Group, the Second Lien Agent and the other Pre-Petition Secured Parties, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections and Adequate Protection shall continue in these proceedings and in any Successor Case, and shall maintain their respective priorities as provided by this Interim Order.

18. Excluded Section 1110 Assets.

(a) No Waiver of Section 1110 Beneficiary Rights. Nothing in this Interim Order (i) shall constitute a waiver, forbearance or adjudication of the rights of any secured party, lessor or vendor, or of any trustee, agent or controlling party for any such entity (including, without limitation, any servicer or beneficial owner of any lessor and including any secured party, lessor or vendor under any aircraft lease or mortgage) (in each case, an “*1110*

Beneficiary”) under section 1110 of the Bankruptcy Code; or (ii) shall prejudice, limit or otherwise affect any rights of any 1110 Beneficiary or other entity under section 1110 of the Bankruptcy Code, all of which rights are expressly preserved.

(b) Limitation on Liens in Excluded Section 1110 Assets. Notwithstanding any provision to the contrary in this Interim Order, to the extent prohibited or restricted under any Section 1110 Agreement (as defined below), the DIP Lenders and the other Pre-Petition Secured Parties (I) shall not by this Interim Order be granted liens on, or security interests in, (i) any of the Excluded Section 1110 Assets (as defined below), (ii) any lease of, or any Debtor’s leasehold interest in, the Excluded Section 1110 Assets, or (iii) any other property or Section 1110 Agreement which is subject to the rights of an 1110 Beneficiary under section 1110 of the Bankruptcy Code; (II) shall not be listed as a loss payee, as an additional insured or contract party on any insurance policy which the Debtors are obligated to any 1110 Beneficiary to obtain or maintain on or with respect to any Excluded Section 1110 Assets, except to the extent that the Indenture Trustee was so listed as of the Commencement Date; (III) shall not, by virtue of this Interim Order, be entitled to exercise, assert or otherwise have the benefits of any rights or interests of any Debtor under any lease of the Excluded Section 1110 Assets or property described in clause (I) of this paragraph, including rights, or interests in, or to any sums payable to, any Debtor under any lease of the Excluded Section 1110 Assets or property described in clause (I) and rights or interests in or to any property held under such lease; (IV) shall not be given, and the Debtors likewise shall not place, placards or other indicia of security interests or liens in or on any Excluded Section 1110 Assets or property described in clause (I) above in favor of the DIP Agent, the Indenture Trustee, the Senior Noteholder Group or the Second Lien Agent; and (V) to the extent that any liens are granted hereunder in any Excluded Section 1110

Assets or Section 1110 Agreements, such liens shall be “silent” liens such that neither the DIP Agent, the DIP Lenders, nor the Senior Noteholder Group shall have the right to exercise any remedies with respect thereto until the obligations under the relevant Section 1110 Agreements have been satisfied and paid in full; provided, however, that the proceeds, if any, received by any Debtor on account of any Excluded Section 1110 Asset shall be subject to the DIP Liens and the Adequate Protection Replacement Liens.

(c) The term “Section 1110 Agreement” shall mean any agreement related to the Excluded Section 1110 Assets, including, without limitation, security agreements, mortgages, trusts, leases, conditional sale agreements or other instruments applicable to such Excluded Section 1110 Assets.

(d) The term “Excluded Section 1110 Asset” shall mean any interest of the Debtors in (A) any equipment described in section 1110(a)(3) of the Bankruptcy Code and any substitutions, renewals and replacements thereof, and any improvements, accessions and accumulations incident thereto, (B) any other asset with respect to which the granting of any lien would cause a default, directly or indirectly, of any Section 1110 Agreement and (C) any deposit or reserve delivered by a Debtor to a Section 1110 Beneficiary in connection with the purchase, finance or lease of an Excluded Section 1110 Asset, to the extent that there is a restriction or prohibition in the related Section 1110 Agreement on the granting of any liens or assignments; provided that the DIP Liens shall attach automatically to any reversionary or residual interest any Debtor may have in such deposit or reserve upon the satisfaction of the obligations secured thereby.

19. **Other Rights and Obligations.**

(a) Expenses. The Debtors will pay all reasonable expenses incurred by the DIP Agent, the DIP Lenders and the Senior Noteholder Group, (including the reasonable fees and disbursements of all counsel for the DIP Lenders and any internal or third-party appraisers, consultants, financial advisors and auditors advising the DIP Lenders) in connection with the preparation, execution, delivery, administration and enforcement of the DIP Loan Documents, the First Lien Loan Documents, the Interim Cash Collateral Order, this Interim Order, any Final Order and any other agreements, instruments, pleadings or other documents prepared or reviewed in connection with any of the foregoing, without regard to the amounts set forth with respect thereto in the Approved Budget, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated. Payment of such fees shall not be subject to allowance by this Court. Professionals for the DIP Agent, the DIP Lenders and the Senior Noteholder Group (collectively, the “*Lender Professionals*”) shall not be required to comply with the U.S. Trustee fee guidelines but the Lender Professionals shall submit copies of invoices to the U.S. Trustee, counsel for the Committee, counsel for the Second Lien Lenders and such other parties as the Court may direct. If the Debtors, U.S. Trustee or the Committee objects to the reasonableness of the fees and expenses of any Lender Professional and cannot resolve such objection within ten (10) days of receipt of such invoices, the objecting party shall file with the Court and serve on such Lender Professional an objection (the “*Fee Objection*”) limited to the issue of reasonableness of such fees and expenses. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order the undisputed fees, costs and expenses reflected on any invoice to which a Fee Objection has been timely filed.

(b) Binding Effect. Subject to paragraph 7 above, the provisions of this Interim Order, including all findings herein, and the DIP Loan Documents shall be binding upon

all parties in interest in these Cases, including the DIP Lenders, the Pre-Petition Secured Parties, the Committee and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, any examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in any of the Cases, in any Successor Case, or upon dismissal of any such Case or Successor Case; provided, however, that the DIP Lenders and the Senior Noteholder Group shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Case or Successor Case.

(c) No Waiver. Neither the failure of the Senior Noteholder Group or the Pre-Petition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Pre-Petition Credit Documents or otherwise (or any delay in seeking or exercising same), nor the failure of the DIP Agent or the DIP Lenders to seek relief or otherwise exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents or otherwise (or any delay in seeking or exercising same), shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Interim Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Senior Noteholder Group or any other Pre-Petition Secured Party, the DIP Agent or any DIP Lender, to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion). Except as prohibited by this Interim Order, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or

implicitly, or otherwise impair, the ability of the Senior Noteholder Group, the Second Lien Agent (subject to that certain Intercreditor Agreement, dated as of August 13, 2009, by and among Holdings, the Guarantors, the Indenture Trustee and the Second Lien Collateral Agent (as defined in the Intercreditor Agreement) (the “*Intercreditor Agreement*”)), the Second Lien Lenders (subject to the Intercreditor Agreement), the DIP Agent or the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Agent, the DIP Lenders, the Senior Noteholder Group, Second Lien Agent or Second Lien Lenders, respectively. Except to the extent otherwise expressly provided in this Interim Order, neither the commencement of the Cases nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the Pre-Petition Secured Parties with respect to non-Debtor entities or their respective assets, whether such rights and remedies arise under the Pre-Petition Credit Documents, applicable law, or equity.

(d) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Agent, the DIP Lenders, the Senior Noteholder Group and the other Pre-Petition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

(e) Setoff or Recoupment of the United States. Nothing herein shall impair any rights of setoff or recoupment of the United States, subject to any defenses the Debtors may have in respect thereof.

(f) Trust Funds. The Cash Collateral shall not include and the DIP Liens and the Adequate Protection Replacement Liens shall not attach to any trust funds including, without limitation, passenger inspection user fees, passenger security fees, or passenger facility charges.

(g) No Marshaling. Except as provided in the DIP Credit Agreement and the DIP Loan Documents, the Debtors shall not attempt to subject the DIP Agent, the DIP Lenders or the Pre-Petition Secured Parties to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, as applicable.

(h) Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to any of the Pre-Petition Secured Parties hereunder is insufficient to compensate for any diminution in value of their respective interests in the Pre-Petition Collateral during the Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the Pre-Petition Secured Parties that the adequate protection granted herein does in fact adequately protect the Pre-Petition Secured Parties against any diminution in value of their respective interests in the Pre-Petition Collateral (including Cash Collateral).

(i) Amendments. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, unless such amendment, modification, supplement or waiver (i) increases the interest rate (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of

all of the DIP Lenders in respect of the DIP Facility, (iii) changes the Final Maturity Date, or (iv) adds or amends (in any respect unfavorable to the Debtors) any Event of Default. No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Debtors and the DIP Agent (after having obtained the requisite approval required under the DIP Loan Documents) and, except as provided herein, approved by this Court.

(j) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control. In the event of any inconsistency between the terms and conditions of the Interim Cash Collateral Order and of this Interim Order, the provisions of this Interim Order shall govern and control.

(k) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Commencement Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule or Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(l) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

20. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for March 14, 2012, at 3:30 p.m (prevailing Eastern time) at the United States Bankruptcy Court for the Eastern District of New York. The proposed Final Order shall be substantially the same as the Interim Order except that those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) **Final Hearing Notice.** On or before [___], 2012 the Debtors shall serve, by United States mail, first-class postage prepaid (such service constituting adequate notice of the Final Hearing), (i) notice of the entry of this Interim Order and of the Final Hearing (the “***Final Hearing Notice***”) and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to the Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than [___], 2012, which objections shall be served so that the same are received on or before such date by: (a) the Debtors, 101 World Drive, Peachtree City, Georgia 30269, Attn.: Brian Gillman, Esq.; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher T. Greco; (c) counsel to any statutory committee appointed in these chapter 11 cases; [(d) the indenture trustee for the first lien noteholders, Wells Fargo Bank, National Association, 7000 Central Parkway, Suite 550,

Atlanta, Georgia 30328, Attn.: Corporate Trust Services;] (e) counsel to the Senior Noteholder Group, Latham & Watkins LLP, 885 Third Avenue, New York NY 10022, Attn.: Mark A. Broude, Esq. and Emily B. Menchel, Esq.; (f) counsel to the holder of the second lien term loan, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attn.: Joshua A. Feltman, Esq.; (g) counsel to the prepetition equity holders, MatlinPatterson Global Advisors LLC, 520 Madison Avenue, New York, New York 10022, Attn: Raph Posner, Esq.; (h) counsel to the Committee, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Sharon L. Levine, Esq. and S. Jason Teele, Esq.; (i) the International Brotherhood of Teamsters, 2351 Sunset Blvd., Suite 170-709, Rocklin, California 95765, Attn.: Gary Goodpaster and 110 Wall Street, 3rd Floor, New York, New York 10005, Attn: Cynthia De Figueiredo; (j) the Airline Pilots Association, 1625 Massachusetts Avenue NW, Washington, DC 20036, Attn.: Office of the General Counsel; (k) Transport Workers Union of America, AFL-CIO Local 540, 2054 Village Park Drive, Peachtree City, Georgia 30269, Attn: Joseph Papien and (l) the United States Trustee for Region 2, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn.: Andrea B. Schwartz, Esq. and 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201, Attn.: Alicia Leonhard, Esq.

21. **Retention of Jurisdiction.** The Bankruptcy Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: February , 2012

[]

United States Bankruptcy Judge

EXHIBIT A

Initial Approved Budget

Global Aviation Holdings Inc. (Consolidated)
Weekly Cash Summary - DIP Budget

(\$ in millions)

Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	13 weeks Post-filing
Week Ending	2/24/2012	3/2/2012	3/9/2012	3/16/2012	3/23/2012	3/30/2012	4/6/2012	4/13/2012	4/20/2012	4/27/2012	5/4/2012	5/11/2012	5/18/2012	
Cash Balance: Beginning of Period ⁽¹⁾	\$32.8	\$15.8	\$12.3	\$4.5	\$5.6	\$6.5	\$0.9	(\$11.8)	(\$13.4)	(\$9.0)	(\$8.6)	(\$9.3)	(\$11.6)	\$32.8
Military flying (international & domestic)	12.4	12.6	12.6	10.8	10.4	10.4	10.4	10.2	10.3	10.3	9.8	9.8	9.0	139.0
Adjustment to TRANSCOM Receipts	-	-	-	-	-	-	-	-	-	-	-	0.5	-	0.5
Military fuel reconciliation	(3.4)	(1.9)	(1.2)	-	-	-	(3.6)	-	-	-	-	-	-	(10.2)
Adjusted Military flying	9.0	10.7	11.4	10.8	10.4	10.4	6.8	10.2	10.3	10.3	9.8	10.3	9.0	129.3
Commercial passenger	0.1	0.1	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.3	0.3	0.3	4.1
Commercial cargo	3.3	2.8	0.5	1.0	4.6	0.7	2.8	0.6	6.3	0.5	3.3	0.5	3.1	29.9
Maintenance reserve reimbursement	-	-	-	-	-	-	0.5	-	-	-	2.1	-	-	2.5
Other	(0.0)	-	0.3	-	-	-	0.3	0.0	-	-	-	0.3	0.0	1.0
Total receipts	12.3	13.5	12.7	12.1	15.4	11.6	10.7	11.2	17.0	11.2	15.5	11.4	12.5	167.0
Disbursements:														
Total aircraft and engine leases	3.8	2.6	1.5	0.7	1.6	4.0	5.8	0.2	0.5	1.8	1.5	1.0	0.5	25.6
Total maintenance	5.3	2.0	4.1	1.9	1.1	4.5	0.9	3.2	2.4	1.4	2.3	2.8	2.1	33.8
Compensation and benefits	5.1	1.3	4.5	1.3	4.0	0.2	5.4	0.2	2.4	2.4	2.3	2.5	2.1	33.8
Fuel	9.3	5.9	5.6	3.1	4.9	5.8	3.0	5.0	4.8	2.8	5.8	4.3	4.3	64.5
General	5.7	5.2	4.9	3.9	2.8	2.6	2.7	4.2	2.5	2.4	2.6	3.2	2.4	45.1
Professional Fees	0.1	-	-	-	0.1	-	5.7	-	-	-	1.7	-	-	7.5
Total disbursements	29.3	17.0	20.5	11.0	14.5	17.1	23.5	12.8	12.6	10.7	16.2	13.7	11.4	210.3
Net cash flow	(17.0)	(3.5)	(7.8)	1.1	0.9	(5.5)	(12.7)	(1.6)	4.4	0.4	(0.7)	(2.3)	1.1	(43.3)
Cumulative Net Cash Flow	(17.0)	(20.6)	(28.4)	(27.3)	(26.4)	(31.9)	(44.6)	(46.2)	(41.9)	(41.4)	(42.1)	(44.4)	(43.3)	(43.3)
Cash balance: End of period ⁽¹⁾	15.8	12.3	4.5	5.6	6.5	0.9	(11.8)	(13.4)	(9.0)	(8.6)	(9.3)	(11.6)	(10.5)	(10.5)
DIP Funding	-	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	30.0	30.0	30.0	30.0	30.0
Less: Interest	-	-	-	-	-	(0.2)	-	-	-	(0.2)	-	-	-	(0.4)
Less: Fees	-	(0.9)	-	-	-	-	-	-	-	-	-	-	-	(0.9)
Net DIP Cash	-	14.1	14.1	14.1	14.1	13.9	13.9	13.9	13.9	28.7	28.7	28.7	28.7	28.7
Total Liquidity (Cash + DIP)	\$15.8	\$26.4	\$18.6	\$19.7	\$20.6	\$14.8	\$2.1	\$0.5	\$4.9	\$20.1	\$19.4	\$17.1	\$18.2	\$18.2

Notes:

(1) Includes World Risk Solutions Ltd.

EXHIBIT B

Variance Report

Global Aviation Holdings Inc. (Consolidated)
Weekly Variance Report

Week Ending: 3/2/2012						
	Budget	Carry-forward	Covenant	Actual	Variance to budget	Covenant Status
Receipts:						
Military flying (international & domestic)	12.6					
Adjustment to TRANSCOM receipts	-					
Military fuel reconciliation	(1.9)					
Adjusted Military flying	10.7					
Commercial passenger	0.1					
Commercial cargo	2.8					
Maintenance reserve reimbursements	-					
Other	-					
Total receipts	13.5					
Disbursements:						
Total aircraft and engine leases	2.6		-			
Total maintenance	2.0		-			
Total compensation and benefits	1.3		-			
Total Fuel	5.9		-			
General	5.2		-			
Restructuring professional fees	-		-			
Total disbursements	17.0					
Net cash flow	(3.5)					

Exhibit B

DIP Credit Agreement

L&W Draft 2/24/12

This draft Senior Secured Super-Priority Debtor-in-Possession Credit Agreement is for informational purposes only and is not a commitment to provide, arrange or structure the DIP Facility. This document shall be treated as confidential and may not be used, circulated, quoted or otherwise referred to in any document.

SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION

CREDIT AGREEMENT,

dated as of March [__], 2012,

among

GLOBAL AVIATION HOLDINGS INC.,

as the Borrower,

and

**CERTAIN OTHER SUBSIDIARIES OF
GLOBAL AVIATION HOLDINGS INC. PARTY HERETO,
as Guarantors**

(together with the Borrower, each a Debtor and Debtor in Possession),

THE LENDERS PARTY HERETO

and

[_____],

as Administrative Agent and Collateral Agent

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This SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, amended and restated, modified or supplemented from time to time, this “**Agreement**”), dated as of March [___], 2012, among Global Aviation Holdings Inc., a Delaware corporation (the “**Borrower**”), the guarantors party hereto (the “**Guarantors**”), and together with the Borrower, each a debtor-in-possession), the lenders from time to time party to this agreement (the “**Lenders**”) and [_____], as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”) and as collateral agent for the Secured Parties (in such capacity, the “**Collateral Agent**”).

WITNESSETH:

WHEREAS, on February 5, 2012 (the “**Petition Date**”), the Borrower commenced Chapter 11 Case Nos. 12-40782 through 12-40790, as administratively consolidated at Chapter 11 Case No. 12-40783 (each a “**Chapter 11 Case**” and collectively, the “**Chapter 11 Cases**”) by filing separate voluntary petitions for reorganization under Chapter 11, 11 U.S.C. 101 *et seq.* (the “**Bankruptcy Code**”), with the United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”). The Borrower and Guarantors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, prior to the Petition Date, each of the Lenders held interests in the 14% Senior Secured First Lien Notes Due 2013 issued by the Borrower, North American Airlines, Inc. and World Airways, Inc. (the “**Pre-Petition Senior Secured Notes**”) pursuant to the Indenture, dated as of August 13, 2009, (as amended, modified or supplemented through the Petition Date, the “**Pre-Petition Indenture**”);

WHEREAS, the Borrower has requested that Lenders provide a senior secured, super-priority term loan facility to the Borrower of up to Forty-five million Dollars (\$45,000,000) in the aggregate to fund the working capital, general corporate needs and financing requirements of the Borrower and the other Loan Parties as debtors and debtors-in-possession, during the pendency of the Chapter 11 Cases and for the other purposes specified herein;

WHEREAS, the Lenders are willing to make certain loans to the Borrower of up to such amount upon the terms and conditions set forth herein, and in consideration, in part, for the constitution of a portion of the Pre-Petition Senior Secured Notes as administrative priority claims and secured by super-priority priming liens pursuant to the Interim Order and the Final Order;

WHEREAS, the Borrower has agreed to secure all of its Obligations under the Loan Documents and Pre-Petition Indenture pursuant to the Final Order by granting to the Collateral Agent, for the benefit of the Lenders, a super-priority security interest in and lien upon all of their existing and after-acquired personal and real property;

WHEREAS, the business of the Borrower and the Loan Parties is a mutual and collective enterprise and the Borrower believes that the consolidation of all loans and other financial accommodations under this Agreement will enhance the aggregate borrowing powers of the Borrower and facilitate the administration of the Chapter 11 Cases and its loan relationship with the Lenders, all to the mutual advantage of the Borrower and its Subsidiaries;

WHEREAS, the Lenders’ willingness to extend financial accommodations to the Borrower, is done solely as an accommodation to the Borrower and at the Borrower’s request and in furtherance of the mutual and collective enterprise of the Loan Parties; and

WHEREAS, capitalized terms used in this Agreement shall have the meanings ascribed to them in Article I and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Article I shall govern. All Schedules, Exhibits and other attachments hereto, or expressly identified to this Agreement, taken together with this Agreement, shall constitute a single agreement. These Recitals shall be construed as part of the Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I.
DEFINITIONS**

Section 1.01. **Defined Terms.** As used in this Agreement, the following terms shall have the meanings specified below:

“**ABR**” shall mean, when used in reference to any Loans, Loans that bear interest at a rate determined by reference to the Alternate Base Rate.

“**ABR Borrowing**” shall mean a Borrowing comprised of ABR Loans.

“**ABR Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**Adjusted LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, (a) an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 *minus* the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period; *provided*, that, on and after the Closing Date, if such rate is less than 2.0% per annum, the ‘Adjusted LIBOR Rate’ shall be deemed to be 2.0% per annum.

“**Administrative Agent**” shall have the meaning assigned to such term in the preamble hereto and includes each other Person appointed as the successor administrative agent pursuant to Article IX.

“**Administrative Agent Fees**” shall have the meaning assigned to such term in Section 2.05(a).

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form supplied from time to time by the Administrative Agent.

“**Advisors**” shall mean legal counsel (including local, foreign and in-house counsel), auditors, accountants, consultants, appraisers, engineers or other advisors.

“**Affiliate**” of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that Beneficial Ownership of 20% or more of the Voting Stock of a Person shall be deemed to be control.

“**Agents**” shall mean the Administrative Agent and the Collateral Agent; and “**Agent**” shall mean any of them.

“**Agreement**” shall have the meaning assigned to such term in the preamble hereto.

“**Alternate Base Rate**” shall mean, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50%; *provided*, that, on and after the Closing Date, if such rate is less than 3.0% per annum, the ‘Alternate Base Rate’ shall be deemed to be 3.0% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

“**Alternate Currency**” shall mean each of euros, pounds, Swiss francs and Canadian dollars.

“**Anti-Terrorism Laws**” shall have the meaning assigned to such term in Section 3.22(a).

“**Applicable Agreements**” shall have the meaning assigned to such term in Section 3.06(a).

“**Applicable Margin**” shall mean, 9.00% with respect to any ABR Loan and (b) 10.00% with respect to any Eurodollar Loan.

“**Approved Budget**” shall mean the thirteen-week cash flow forecast for the thirteen-week period beginning on the Closing Date substantially in the form of Exhibit J attached hereto, and otherwise reasonably acceptable to the Administrative Agent as directed by the Required Lenders and in accordance with the Interim Order and Final Order, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement or with the written consent of the Required Lenders.

“**Approved Fund**” shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or investing in bank and other commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Asset Sale**” shall mean any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property.

“**Assignment and Acceptance**” shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required pursuant to Section 10.04(b)), and accepted by the Administrative Agent, substantially in the form of Exhibit A, or such other form as shall be approved by the Administrative Agent.

“**Attributable Debt**” in respect of a sale and leaseback transaction occurring on or after the Closing Date shall mean, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with GAAP) of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction (including any period for which such lease has been extended or may, at the option of the lessor, be

extended); *provided, however*, if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation.

“**Avoidance Actions**” shall mean all claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, 553 or 724(a) of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar federal or state law.

“**Bankruptcy Code**” shall have the meaning assigned to such term in the recitals hereto.

“**Bankruptcy Court**” shall have the meaning assigned to such term in the recitals hereto.

“**Bankruptcy Law**” shall mean the Bankruptcy Code or any similar federal, state or foreign law for the relief of debtors.

“**Base Rate**” shall mean, for any day, a rate per annum that is equal to the corporate base rate of interest established by the Administrative Agent from time to time; each change in the Base Rate shall be effective on the date such change is effective. The corporate base rate is not necessarily the lowest rate charged by the Administrative Agent to its customers.

“**Beneficial Owner**” shall have the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The term “beneficial ownership” has a corresponding meaning.

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor thereto).

“**Board of Directors**” shall mean (i) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (ii) with respect to a partnership, the board of directors of the general partner of the partnership, (iii) with respect to a limited liability company, the managing member or members or any controlling committee or board of directors of such company or of the sole member or of the managing member thereof and (iv) with respect to any other Person, the board of directors or committee of such Person serving a similar function.

“**Borrower**” shall have the meaning assigned to such term in the preamble hereto.

“**Borrowing**” shall mean Loans made on the same date.

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

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close.

“**Capital Expenditures**” shall mean for any period expenditures (including Capital Lease Obligations, but excluding expenditures made with the proceeds of casualty insurance or reinvestment of proceeds of asset dispositions as expressly permitted under Section 6.05) in respect of the purchase or

other acquisition of fixed or capital assets that have a useful life of more than one year and that are required to be capitalized in conformity with GAAP.

“**Capital Lease Obligation**” shall mean, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

“**Capital Requirements**” shall mean, as to any Person, any matter, directly or indirectly, (i) regarding capital adequacy, capital ratios, capital requirements, the calculation of such Person’s capital or similar matters, or (ii) affecting the amount of capital required to be obtained or maintained by such Person or any Person controlling such Person (including any holding company), or the manner in which such Person or any Person controlling such Person (including any holding company), allocates capital to any of its contingent liabilities (including letters of credit), advances, acceptances, commitments, assets or liabilities.

“**Carve-Out**” shall have the meaning defined in the Interim Order or, when applicable, the Final Order.

“**Carve-Out Account**” shall have the meaning assigned to such term in Section 2.18(g).

“**Carve-Out Cap**” shall have the meaning defined in the Interim Order or, when applicable, the Final Order.

“**Carve-Out Trigger Notice**” shall have the meaning assigned to such term in Section 2.18(g).

“**Cash Collateral**” shall have the meaning ascribed to such term in Section 363 of the Bankruptcy Code.

“**Cash Equivalents**” shall mean:

- (i) Dollars;
- (ii) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than 90 days from the date of acquisition;
- (iii) certificates of deposit and Eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case with any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia or a U.S. branch of a foreign bank having capital and surplus, at the time of acquisition thereof, in excess of \$750,000,000 and having, at the time of acquisition thereof, one of the two highest ratings obtainable from either Standard & Poor’s Rating Services, Inc. or Moody’s Investor Service, Inc. and a Thomson Bank Watch Rating of “B” or better;
- (iv) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition thereof, having

one of the two highest ratings obtainable from either Standard & Poor's Rating Services, Inc. or Moody's Investor Service, Inc.; and

- (v) money market funds, at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (iv) of this definition.

“Casualty Event” shall mean any loss of title, any loss of, damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of the Borrower or any of its Subsidiaries. “Casualty Event” shall include but not be limited to any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Requirement of Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

“CFC” shall mean a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law” shall mean (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

A **“Change of Control”** shall mean the occurrence of any of the following:

- (i) any sale, lease, exchange or other transfer (other than a Lien permitted by Section 6.07 or by way of consolidation or merger), in one transaction or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a **“Group”**), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Agreement) other than in all such cases to one or more Permitted Holders;
- (ii) the approval by the holders of Equity Interests of the Borrower of any plan or proposal for the liquidation or dissolution of the Borrower (whether or not otherwise in compliance with the provisions of this Agreement);
- (iii) any Person or Group (other than the Permitted Holders and any entity controlled by the Permitted Holders) shall become the Beneficial Owner, directly or indirectly, of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; or

- (iv) the replacement during the term of this Agreement of a majority of the Board of Directors of the Borrower and such replacement shall not have been approved by a vote of at least a majority of the Continuing Directors.

“**Chapter 11 Case**” and “**Chapter 11 Cases**” shall have the meaning assigned to such term in the recitals.

“**Charges**” shall have the meaning assigned to such term in Section 10.13.

“**Claims**” shall have the meaning assigned to such term in Section 10.03(b).

“**Closing Date**” shall mean the date of the incurrence of the Interim Date Loans hereunder.

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

“**Collateral**” shall mean “Collateral” as such term is defined in the Security Agreement and any other property, whether now owned or hereafter acquired, upon which a Lien securing the Obligations under this Agreement or the other Loan Documents is granted or purported to be granted under any Security Document; provided that in no event shall more than 66% of the Voting Stock and 100% of the non-Voting Stock of a first-tier Foreign Subsidiary that is a CFC be Collateral nor any Equity Interests owned by a Foreign Subsidiary that is a CFC be Collateral.

“**Collateral Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Commission**” shall mean the Securities and Exchange Commission, and any successor thereto.

“**Commitment**” shall mean each Interim Date Commitment, each First Delayed Draw Commitment and each Second Delayed Draw Commitment.

“**Committee**” shall mean the official committee of unsecured creditors appointed in these Chapter 11 Cases on February 13, 2012.

“**Committee’s Professionals**” shall have the meaning assigned to such term in Section 2.18(g).

“**Commodities Account**” shall have the meaning assigned to such term in the Security Agreement.

“**Communications**” shall have the meaning assigned to such term in Section 10.01(d).

“**Companies**” shall mean the Borrower and its Subsidiaries; and “**Company**” shall mean any one of them.

“**Compliance Certificate**” shall mean a certificate of a Financial Officer of the Borrower substantially in the form of Exhibit D.

“**Consolidated Amortization Expense**” shall mean, for any period, the amortization expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Depreciation Expense**” shall mean, for any period, the depreciation expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) *adding thereto*, in each case only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income and without duplication (and with respect to the portion of Consolidated Net Income attributable to any Subsidiary of the Borrower only if a corresponding amount would be permitted at the date of determination to be distributed to the Borrower by such Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its Organizational Documents and all agreements, instruments and Requirements of Law applicable to such Subsidiary or its equityholders):

- (a) Consolidated Interest Expense for such period,
- (b) Consolidated Amortization Expense for such period,
- (c) Consolidated Depreciation Expense for such period,
- (d) Consolidated Tax Expense for such period,
- (e) restructuring-related professional fees,
- (f) pilot retraining obligations that are required pursuant to collective bargaining agreements and that are not part of ordinary course operations,
- (g) severance payments,
- (h) the aggregate amount of all other non-cash charges, expenses or losses reducing Consolidated Net Income (excluding any non-cash charge, expense or loss that results in an accrual of a reserve for cash charges in any future period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period, and

(y) *subtracting therefrom* the aggregate amount of all non-cash items increasing Consolidated Net Income (other than the accrual of revenue or recording of receivables in the ordinary course of business) for such period.

“**Consolidated Interest Expense**” shall mean, with respect to any Person for any period, the sum of, without duplication, the aggregate interest expense of such Person and its Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations (paid or accrued), imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net payments (if any) pursuant to Hedging Obligations (including fees and premiums)), in each case to the extent that any such expense was deducted in computing such Consolidated Net Income on a consolidated basis for such Person and its Subsidiaries for such period and determined in accordance with GAAP.

“**Consolidated Net Income**” shall mean, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Subsidiaries for such period on a consolidated basis, determined in accordance with GAAP, *provided* that there shall be excluded therefrom (without duplication):

- (1) gains or losses from Asset Sales or other dispositions, abandonments or reserves relating thereto or the extinguishment of any Indebtedness, together with any related provision for taxes on such gains or losses;
- (2) extraordinary gains and extraordinary losses, together with any related provision for taxes on such extraordinary gains or extraordinary losses;
- (3) the net income or loss of any Person acquired prior to the date it becomes a Subsidiary of the referent Person or is merged or consolidated with the referent Person or any Subsidiary of the referent Person;
- (4) all gains realized on or because of the purchase or other acquisition by the Borrower or any of its Subsidiaries of any securities of such Person or any of its Subsidiaries;
- (5) any goodwill impairment charges or other non-cash long-term asset impairment charges;
- (6) the net income of any Person, other than a Subsidiary of the referent Person, except to the extent of cash dividends or distributions paid to the referent Person or to a Subsidiary of the referent Person by such Person;
- (7) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Closing Date;
- (8) income or loss attributable to discontinued operations (including, without limitation, operations disposed or during such period whether or not such operations were classified as discontinued);
- (9) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person's assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets; and
- (10) any non-cash expenses or charges resulting from the grant of stock, stock options or other equity-based awards.

“Consolidated Tax Expense” shall mean, for any period, the tax expense of Borrower and its Subsidiaries, for such period, determined on a consolidated basis in accordance with GAAP.

“Contested Collateral Lien Conditions” shall mean, with respect to any Permitted Lien of the type described in clauses (a), (b) and (d) of Section 6.07, the following conditions:

(a) Borrower shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien; and

(b) such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by the Security Documents and the Orders, except if and to the extent that the Requirement of Law creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Lien and security interest created and evidenced by the Security Documents and the Orders.

“**Contingent Obligation**” shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“**primary obligation**”) of any other person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“**Continuing Directors**” shall mean, as of any date of determination, any member of the Board of Directors of the Borrower who (i) was a member of such Board of Directors on the Closing Date, (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election or (iii) was nominated for election to such Board of Directors by a Permitted Holder.

“**Control Agreement**” shall have the meaning assigned to such term in the Security Agreement.

“**Debt Issuance**” shall mean the incurrence by Borrower or any of its Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.04).

“**Debtors**” shall mean the Borrower and the Guarantors.

“**Debtors’ Professionals**” shall have the meaning assigned to such term in Section 2.18(g).

“**Default**” shall mean any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“**Defaulting Lender**” shall mean any Lender, as determined by the Administrative Agent, that (a) has failed to fund any portion of its Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has notified the Administrative Agent, any Lender and/or Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent at the direction of the Required Lenders, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) in the case of a Lender that has a Commitment outstanding at such time, shall take, or is the Subsidiary of any person that has taken, any

action or be (or is) the subject of any action or proceeding of a type described in Section 8.01(h) or (i) (or any comparable proceeding initiated by a regulatory authority having jurisdiction over such Lender or such person).

“**Default Rate**” shall have the meaning assigned to such term in Section 2.06(c).

“**Delayed Draw Commitments**” shall mean the First Delayed Draw Commitments and the Second Delayed Draw Commitments.

“**Delayed Draw Termination Date**” shall mean the First Delayed Draw Termination Date and the Second Delayed Draw Termination Date.

“**Deposit Account**” shall mean all “deposit accounts” as defined in Article 9 of the UCC.

“**DIP Facility**” shall mean the credit facility evidenced by this Agreement.

“**Disqualified Interests**” shall mean any Equity Interests that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, at the option of the holder thereof), or upon the happening of any event (other than an event that would constitute a Change of Control), matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the sole option of the holder thereof (except in each case, upon the occurrence of a Change of Control or to the extent such Equity Interest is only redeemable or exchangeable into Qualified Equity Interests), in whole or in part, on or prior to the date that is 91 days after the Final Maturity Date, for cash or is convertible into or exchangeable for debt securities of the Borrower or its Subsidiaries at any time prior to such date; *provided, however*, that any Equity Interests that would constitute Disqualified Interests solely because the holders thereof have the right to require the Borrower to repurchase or redeem such Equity Interests upon the occurrence of a Change of Control shall not constitute Disqualified Interests if the terms of such Equity Interests provide that the Borrower may not repurchase or redeem any such Equity Interests pursuant to such provisions unless such repurchase or redemption complies with Section 5.05.

“**Dividend**” with respect to any person shall mean that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person outstanding (or any options or warrants issued by such person with respect to its Equity Interests). Without limiting the foregoing, “Dividends” with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

“**Dollar Equivalent**” shall mean, as to any amount denominated in an Alternate Currency as of any date of determination, the amount of dollars that would be required to purchase the amount of such Alternate Currency based upon the spot selling rate at which the Administrative Agent offers to sell such Alternate Currency for dollars in the London foreign exchange market at approximately 11:00 a.m. London time on such date for delivery two (2) Business Days later.

“**Dollars**” or “**\$**” shall mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary that is incorporated or organized under the laws of a State within the United States of America or the District of Columbia.

“**Embargoed Person**” shall have the meaning assigned to such term in Section 6.17.

“**Environment**” shall mean any surface or subsurface natural resource, including air, land, soil, surface waters, ground waters, stream and river sediments and biota (whether outdoor or indoor).

“**Environmental Law**” shall mean any and all applicable laws relating to the Environment or human safety or health as it relates to the Environment.

“**Environmental Permit**” shall mean any permit, license, approval, consent, registration, notification, exemption or other authorization required by or from a Governmental Authority under any Environmental Law.

“**Equity Interests**” shall mean (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited), (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person (other than earn-outs or similar consideration payable in connection with an acquisition) and (v) all warrants, options or other rights to acquire any of the foregoing (but excluding any debt security that is convertible into, or exchangeable for, Equity Interests).

“**ERISA**” shall mean the United States Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” shall mean a corporation, trade or business that is, along with the Borrower or any Subsidiary thereof, a member of a controlled group of corporations or a controlled group of trades or businesses and would be deemed a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“**ERISA Event**” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) the failure to meet the minimum funding standards of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, in each case whether or not waived; (c) the failure to make by its due date a required installment under Section 412 or 430 of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by any Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) a determination that any Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Code or Section 303 of ERISA); (g) the receipt by any Company or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan under Sections 4041 and 4042 of ERISA, respectively, or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (h) the incurrence by any Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (i) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (j) the receipt by any Company or its ERISA Affiliates of any notice concerning

the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (k) the “substantial cessation of operations” within the meaning of Section 4062(e) of ERISA with respect to a Plan; (l) the making of any amendment to any Plan which could result in the imposition of a lien or the posting of a bond or other security or the imposition of a lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Plan; or (m) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in material liability to any Company.

“**Eurodollar Borrowing**” shall mean a Borrowing comprised of Eurodollar Loans.

“**Eurodollar Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“**Event of Default**” shall have the meaning assigned to such term in Article VIII.

“**Excess Amount**” shall have the meaning assigned to such term in Section 2.10.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934.

“**Excluded Taxes**” shall have the meaning assigned to such term in Section 2.15(a).

“**Executive Order**” shall have the meaning assigned to such term in Section 3.22(a).

“**Facility Availability**” shall mean at any date of determination, the sum of the total Commitments as of the Closing Date.

“**Fair Market Value**” shall mean the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the management of the Borrower; *provided* that the Fair Market Value of any asset shall be determined by the Board of Directors of the Borrower, such determination to be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if such Fair Market Value exceeds \$1.0 million.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement, and any regulations or official interpretations thereof.

“**FCPA**” shall have the meaning assigned to such term in Section 3.20(a).

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

“**Fees**” shall mean the fees referred to in Section 2.05.

“**Final Maturity Date**” shall mean the earlier of (i) the date on which all Loans and Obligations have been repaid in full in cash, (ii) the date that occurs six months after the Closing Date; *provided* that

such date may be extended by an additional two months, subject to the consent of more than 66.7% of the Lenders as of the date of such proposed extension, and (iii) the date of termination of the Commitments or acceleration of any Loans following the occurrence and during the continuance of an Event of Default in accordance with Section 8.01.

“**Final Order**” shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be substantially in the form of the Interim Order, *provided* that it shall specify that for every \$1 that a Lender commits to pursuant to this Agreement, \$3 of its Pre-Petition Senior Secured Notes are deemed to be an administrative expense claim and it shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent at the direction of the Required Lenders, together with all extensions, modifications, amendments or supplements thereto, in each case in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness and grant Liens under this Agreement and the other Loan Documents, as the case may be, provides for the super priority of the Administrative Agent’s and the Lenders’ claim and provides for the super priority of the Roll-Up Notes.

“**Financial Officer**” of any Person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such Person.

“**First Day Orders**” shall mean all orders entered by the Bankruptcy Court in the Chapter 11 Cases pursuant to motions and applications filed by the Debtors on or within one (1) day after the Petition Date, in each case in form and substance, reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders, it being understood that the First Day Orders delivered to the Administrative Agent immediately prior to the Petition Date are satisfactory.

“**First Delayed Draw Commitment**” shall mean, with respect to each Lender, the commitment of such Lender to make First Delayed Draw Loans hereunder as set forth on Annex I, or in the Assignment and Acceptance pursuant to which such Lender assumed its First Delayed Draw Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.01(b), Section 2.07(b) or the last paragraph of Section 2.01 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The total amount of the First Delayed Draw Commitments is \$15.0 million.

“**First Delayed Draw Commitment Period**” shall mean the period from and including the Closing Date to the Final Maturity Date.

“**First Delayed Draw Loans**” shall have the meaning assigned to such term in Section 2.01(b).

“**First Delayed Draw Termination Date**” shall mean the earliest to occur of (i) the date the First Delayed Draw Commitments are permanently reduced to zero pursuant to Section 2.01(b) or Section 2.07(b) and (ii) the Final Maturity Date.

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

“**Fiscal Year**” shall mean the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

“**Foreign Lender**” shall mean any Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“Foreign Pension Plan” shall mean any defined benefit plan maintained outside of the jurisdiction of the United States under applicable law that is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Subsidiary” shall mean any Subsidiary of the Borrower that not a Domestic Subsidiary.

“GAAP” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession of the United States, as in effect on the Closing Date.

“Governmental Authority” shall mean any federal, state, local or foreign (whether civil, criminal, military or otherwise) court, central bank or governmental agency, tribunal, authority, instrumentality or regulatory body or any subdivision thereof or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Government Receivables” shall mean the amounts due and payable from time to time to the Borrower from U.S. Transportation Command for military flying completed pursuant to a contract with Air Military Command and as evidenced by invoices provided by the Borrower to U.S. Transportation Command.

“Group” shall have the meaning assigned to such term in the definition of Change of Control in this Section 1.01.

“Guarantee” shall mean a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof), of all or any part of any Indebtedness.

“Guarantor” shall mean any Subsidiary of the Borrower that Guarantees the Loans and the other Loan Obligations in accordance with the provisions of this Agreement, and its respective successors and assigns; provided that in no event shall a Foreign Subsidiary that is a CFC be a Guarantor.

“Hazardous Materials” shall mean hazardous substances, hazardous wastes, hazardous materials, polychlorinated biphenyls (“PCBs”) or any substance or compound containing PCBs, asbestos or any asbestos-containing materials in any form or condition, lead-based paint, urea formaldehyde, pesticides, radon or any other radioactive materials including any source, special nuclear or by-product material, petroleum, petroleum products, petroleum-derived substances, crude oil or any fraction thereof or any other pollutants, contaminants, chemicals, wastes, materials, compounds, constituents or substances, to the extent defined under or subject to regulation under any Environmental Laws.

“Hedging Obligations” shall mean, with respect to any specified Person, the obligations of such Person under (i) interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and other agreements or arrangements designed for the purpose of fixing, hedging or swapping interest rate risk, (ii) commodity swap agreements, commodity option agreements, forward contracts and other agreements or arrangements designed for the purpose of fixing, hedging or swapping commodity price risk, and (iii) foreign exchange contracts, currency swap agreements and other

agreements or arrangements designed for the purpose of fixing, hedging or swapping foreign currency exchange rate risk.

“**Indebtedness**” shall mean, with respect to any Person (without duplication):

- (i) the principal of and premium (if any) in respect of obligations of such Person, whether or not contingent, for borrowed money or evidenced by bonds, notes, debentures or similar instruments;
- (ii) the principal component of all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction, whether or not then due (except to the extent such reimbursement obligation relates to trade payables and such obligation is satisfied within 30 days of incurrence);
- (iii) all Capital Lease Obligations of such Person;
- (iv) the principal component of all obligations of such Person issued or assumed as the balance deferred and unpaid of the purchase price of any property or services (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business that are not overdue by 90 days or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted);
- (v) net obligations of such Person under Hedging Obligations (the amount of such obligations to be equal at any time to the termination value of such arrangement giving rise to such obligation that would be payable by such Person at such time);
- (vi) Attributable Debt of such Person;
- (vii) all Disqualified Interests issued by such Person with the amount of Indebtedness represented by such Disqualified Interests being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any;
- (viii) guarantees and other Contingent Obligations in respect of Indebtedness referred to in clauses (i) through (vii) above; and
- (ix) all Obligations of any other Person of the type referred to in clauses (i) through (vii) which are secured by any Lien on any property or asset of such Person, the amount of any such Obligation being deemed to be the lesser of the Fair Market Value of the property or asset securing such Obligation or the amount of such Obligation.

The amount of any Indebtedness outstanding as of any date shall be the accreted value thereof in the case of any Indebtedness issued with original issue discount. For purposes hereof, the “maximum fixed repurchase price” of any Disqualified Interests that do not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Interests as if such Disqualified Interests were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Agreement.

“**Indemnitee**” shall have the meaning assigned to such term in Section 10.03(b).

“**Information**” shall have the meaning assigned to such term in Section 10.12.

“**Initial Milestone**” shall have the meaning assigned to such term in Section 5.13(a).

“**Initial Milestone Date**” shall mean the date on which the Initial Milestone occurs.

“**Insolvency Proceeding**” shall have the meaning assigned to such term in the definition of “Obligations” in this Section 1.01.

“**Intellectual Property**” shall have the meaning assigned to such term in Section 3.10.

“**Intercompany Note**” shall mean the intercompany demand promissory note substantially in the form of Exhibit C or such other form approved by the Administrative Agent at the direction of the Required Lenders.

“**Interest Election Request**” shall mean a request by Borrower to convert or continue a Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit F.

“**Interest Payment Date**” shall mean (a) as to any ABR Loan, the last Business Day of each month while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan, the last day of the Interest Period applicable to such Loan and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

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

“**Interim Date Commitment**” shall mean, with respect to each Lender, the commitment of such Lender to make Interim Date Loans hereunder as set forth on Annex I, or in the Assignment and Acceptance pursuant to which such Lender assumed its Interim Date Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.01(a) or the last paragraph of Section 2.01 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The total amount of the Interim Date Commitments is \$15.0 million.

“**Interim Date Loans**” shall have the meaning assigned to such term in Section 2.01(a).

“**Interim Date Loan Termination Date**” shall mean the earliest to occur of (i) the date the Interim Date Commitments are permanently reduced to zero pursuant to Section 2.01 or Section 2.07(b), and (ii) the Final Maturity Date.

“**Interim Funding Amount**” shall mean the lesser of (a) \$15.0 million and (b) the maximum amount approved by the Bankruptcy Court in the Interim Order to be made available to the Borrower prior to the Final Order as part of the DIP Facility.

“**Interim Order**” shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing and pursuant to the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law, which shall be reasonably satisfactory in form and substance to the Administrative Agent at the direction of the Required Lenders, together with all extensions, modifications, amendments and supplements thereto, in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders.

“**Investments**” shall have the meaning assigned to such term in Section 6.02.

“**Joinder Agreement**” shall mean a joinder agreement substantially in the form of Exhibit I.

“**Judgment Currency**” shall have the meaning assigned to such term in Section 10.18(a).

“**Judgment Currency Conversion Date**” shall have the meaning assigned to such term in Section 10.18(a).

“**Lenders**” shall have the meaning assigned to such term in the preamble hereto.

“**LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for the Interest Period, the rate per annum determined by the Administrative Agent to be the arithmetic mean of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, “LIBOR Rate” shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent is offered deposits in dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. “**Telerate British Bankers Assoc. Interest Settlement Rates Page**” shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

“**Lien**” shall mean, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest). For the avoidance of doubt, the security deposit in an amount equal to \$3.0 million required in connection with a lease by North American Airlines, Inc. of a Boeing B757-200 Combi Aircraft expected to be leased on or around June 2012 shall not be deemed to have a Lien placed over it to the extent that it is paid directly to the lessor pursuant to the terms of the lease agreement and that the amount of such security deposit has been specifically enumerated in the Approved Budget.

“**Liquidity**” shall mean, on any day, the aggregate amount of cash and Cash Equivalents held by the Borrower and its Subsidiaries at 5:00 p.m., New York City time on such day.

“**Loan Documents**” shall mean this Agreement, the Notes (if any), the Security Documents and each Joinder Agreement.

“**Loan Guarantee**” shall mean each Guarantee provided by a Guarantor under Article VII.

“**Loan Obligations**” shall mean all of the Obligations of the Loan Parties under the Loan Documents.

“**Loan Parties**” shall mean the Borrower and the Guarantors.

“**Loans**” shall mean the collective reference to Interim Date Loans, First Delayed Draw Loans and Second Delayed Draw Loans.

“**Material Adverse Effect**” shall mean a material adverse change to the business, assets, liabilities, operations, results of operations, or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, other than as customarily occurs as a results of events leading up to and following the commencements of a proceeding under Chapter 11 of the Bankruptcy Code and the commencement of the cases and the continuation and prosecution thereof.

“**Maximum Rate**” shall have the meaning assigned to such term in Section 10.13.

“**Milestones**” shall have the meaning assigned to such term in Section 5.13.

“**Money Laundering Laws**” shall have the meaning assigned to such term in Section 3.20(b).

“**Mortgage**” shall mean each of the mortgages, deeds of trust, deeds to secure debt or assignments of the foregoing or other similar documents delivered by the Borrower or any Guarantor pursuant to the terms of this Agreement that create, in favor of the Collateral Agent, Liens on any fee interest in real property owned by the Borrower or any Guarantor, as the case may be.

“**Multiemployer Plan**” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA and in respect of which any Company or any ERISA Affiliate has, or could reasonably be expected to have, liability, contingent or otherwise, under ERISA.

“**Net Government Receivables**” shall mean the Government Receivable net of any amounts (i) due, payable or otherwise owed to the U.S. Government by Borrower or any of its Subsidiaries or (ii) that may be set off, deducted or recouped by the U.S. Government and such amount shall be certified by a Responsible Officer, provided that clauses (i) and (ii) of this definition shall exclude unpaid Taxes in an aggregate amount no greater than \$2.0 million and which are (x) payable to the U.S. Government and (y) not yet overdue.

“**Net Proceeds**” shall mean the aggregate cash proceeds received by the Borrower or any of its Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale or disposition of such non-cash consideration, including, without limitation, (i) actual, reasonable and necessary legal, title, recording, accounting and investment banking fees, sales commissions, and any severance and relocation expenses incurred as a result thereof, (ii) all taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions

and any tax sharing arrangements, (iii) amounts required to be applied to the repayment of Indebtedness secured by a prior Lien on the asset or assets that were the subject of such Asset Sale, (iv) appropriate amounts to be provided by the Borrower or any of its Subsidiaries as a reserve, (1) against any liabilities associated with such Asset Sale and retained by the Borrower or any of its Subsidiaries after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, or (2) for adjustment in respect of the sale price of the property or assets that are the subject of such Asset Sale; and (v) amounts required to be paid to any Person (other than the Borrower or any of its Subsidiaries) owning a beneficial interest in the assets that are the subject of the Asset Sale.

“**Non-Defaulting Lenders**” shall mean any Lender that is not a Defaulting Lender.

“**Non-Excluded Taxes**” shall have the meaning assigned to such term in Section 2.15(a).

“**Notes**” shall mean any Notes evidencing the Loans, issued pursuant to Section 2.04(e), if any, substantially in the form of Exhibit E.

“**Obligations**” shall mean all loans, advances, debts, principal, interest (including any interest that accrues after the commencement of a bankruptcy, insolvency, receivership or other similar proceeding (an “**Insolvency Proceeding**”) at the applicable interest rate, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities, obligations (including indemnification obligations), fees, trustee fees, expenses and indemnities provided for in any documentation governing Indebtedness (including any fees, expenses or indemnities that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts required to be paid or reimbursed under any documentation governing Indebtedness or by law or otherwise, and all guarantees of the foregoing amounts. For the avoidance of doubt, Obligations shall include the principal of, interest on and other amounts owing with respect to the Roll-Up Notes pursuant to the Final Order.

“**OFAC**” shall have the meaning assigned to such term in Section 3.20(c).

“**Officer**” shall mean, with respect to any Person, the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice-president of such Person.

“**Officer’s Certificate**” shall mean a certificate signed on behalf of the Borrower by an Officer of each Borrower, which Officer shall be the principal executive officer, the principal financial officer or the principal accounting officer of the Borrower.

“**Orders**” shall mean the Interim Order and the Final Order.

“**Organizational Documents**” shall mean, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or deed of incorporation and by-laws (or similar documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement or memorandum and articles of association (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person (and, where applicable, the equityholders or shareholders registry of such Person), (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in any other case, the

functional equivalent of the foregoing, and (vi) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such Person.

“**Other Taxes**” shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (together with any interest, penalties and other additions thereto) arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Participant**” shall have the meaning assigned to such term in Section 10.04(e).

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(e).

“**Patriot Act**” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

“**Permits**” shall have the meaning assigned to such term in Section 3.07(b).

“**Permitted Holders**” shall mean Matlin Patterson Global Advisers LLC and its majority owned and controlled Affiliates.

“**Permitted Investment**” shall mean shall mean each of the below, *provided* that such Permitted Investment is in compliance with the Approved Budget:

- i. any Investment made as a result of the receipt of non cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 5.08;
- ii. Investments represented by guarantees that are otherwise permitted by this Agreement;
- iii. Investments in securities of trade creditors or customers of the Loan Parties received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers in exchange for claims against such trade creditors or customers or in good faith settlement of delinquent obligations of such trade creditors and customers;
- iv. advances to and deposits with suppliers and customers of the Loan Parties in the ordinary course of business, *provided* that other than advances and deposits that are made to credit card companies, fuel companies, airports or aviation-related entities in the ordinary course of business and consistent with past practice, such advances and deposits shall be in an amount no greater than \$100,000 at any time; and
- v. payroll, travel, and similar advances made in the ordinary course of business to cover matters that are expected at the time of such advances ultimately to be treated as expenses in accordance with GAAP; *provided* that other than advances to major airlines, nationally recognized travel agencies and travel companies related to the prepayment of flights or lodging that are made in the ordinary course of business and consistent with past practice, such travel and similar advances shall be in an outstanding aggregate amount no greater than \$100,000 at any time.

“**Permitted Liens**” shall have the meaning assigned to such term in Section 6.07.

“**Person**” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Petition Date**” shall have the meaning assigned to such term in the recitals.

“**Plan**” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

“**Platform**” shall have the meaning assigned to such term in Section 10.01(d).

“**Post-Petition**” shall mean the time period beginning immediately upon the filing of the Chapter 11 Cases.

“**Preferred Stock**” shall mean, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

“**Preferred Stock Issuance**” shall mean the issuance or sale by the Borrower or any of its Subsidiaries of any Preferred Stock after the Closing Date (other than as permitted by Section 6.04).

“**Pre-Petition**” shall mean the time period ending immediately prior to the Petition Date.

“**Pre-Petition First Lien Obligations**” shall mean the Obligations as defined in the Pre-Petition Indenture.

“**Pre-Petition First Lien Trustee**” shall mean, collectively, the “Trustee” and the “Collateral Agent” under and as defined in the Pre-Petition Indenture.

“**Pre-Petition Indebtedness**” shall mean any or all Indebtedness of Loan Parties incurred prior to and outstanding on the Petition Date.

“**Pre-Petition Indenture**” shall have the meaning assigned to such term in the recitals.

“**Pre-Petition Loan Documents**” shall mean “Indenture Documents” under and as defined in the Pre-Petition Indenture and “Loan Documents” under and as defined the Pre-Petition Second Lien Credit Agreement.

“**Pre-Petition Note Documents**” shall mean “Indenture Documents” under and as defined in the Pre-Petition Indenture.

“**Pre-Petition Second Lien Agent**” shall mean, collectively, the “Administrative Agent” and the “Collateral Agent” under and as defined in the Pre-Petition Second Lien Credit Agreement.

“**Pre-Petition Second Lien Credit Agreement**” shall mean the Second-Lien Term Loan Credit Agreement, dated as of September 29, 2009 among Global Aviation Holdings Inc., North American Airlines, Inc. and World Airways, Inc. as borrowers, the guarantors party thereto, the lenders party thereto, Wells Fargo Bank, National Association as administrative agent and collateral agent.

“Pre-Petition Second Lien Lenders” shall mean the “Lenders” under and as defined in the Pre-Petition Second Lien Credit Agreement.

“Pre-Petition Second Lien Obligations” shall mean the Obligations as defined in the Pre-Petition Second Lien Credit Agreement.

“Pre-Petition Senior Secured Notes” shall have the meaning assigned to such term in the recitals.

“Primed Liens” shall have the meaning assigned to such term in Section 2.18(e).

“Proceedings” shall have the meaning assigned to such term in Section 3.07(a).

“Professionals” shall mean professionals retained by the Debtors or the Committee in these Chapter 11 Cases.

“Qualified Capital Stock” of any Person shall mean any Equity Interests of such Person that are not Disqualified Interests.

“Qualified Equity Interest” shall mean an Equity Interest that is not a Disqualified Interest.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Register” shall have the meaning assigned to such term in Section 10.04(c).

“Regulation D” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation S-X” shall mean Regulation S-X promulgated under the Securities Act as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation T” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Person” shall mean, with respect to any Person, (a) each Affiliate of such Person and each of the officers, directors, partners, Administrative Agents, employees, affiliates, shareholders, Advisors, agents, attorneys-in-fact of each of the foregoing, and (b) if such Person is an Agent, each other Person designated, nominated or otherwise mandated by or assisting such Agent pursuant to Section 9.05 or any comparable provision of any Loan Document.

“**Release**” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating.

“**Released Parties**” shall have the meaning assigned to such term in Section 2.21.

“**Required Lenders**” shall mean, at any date of determination, Lenders holding Loans and unused Commitments representing more than 50% of the sum of all Loans outstanding and unused Commitments at such time.

“**Requirements of Law**” shall mean, collectively, any and all requirements of any Governmental Authority including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

“**Response**” shall mean (a) “response” as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required under any Environmental Law or by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the Environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material; or (iii) perform studies and investigations in connection with, as a precondition to, or to determine the necessity of the activities described in, clause (i) or (ii) above.

“**Responsible Officer**” of any Person shall mean any executive officer or chief financial officer, principal accounting officer, treasurer or controller of such Person and any other officer or similar official thereof with responsibility for the administration of the obligations of such person in respect of this Agreement.

“**Roll-Up Notes**” shall mean the portion of the Pre-Petition Senior Secured Notes held by the Lenders which are constituted as administrative priority claims and granted super priority priming liens pursuant to the Final Order. For each \$1 of Commitments held by each Lender as of the Closing Date, \$3 of such Lender’s Pre-Petition Senior Secured Notes shall constitute Roll-Up Notes.

“**Sale and Leaseback Transaction**” shall have the meaning assigned to such term in Section 6.08.

“**Second Delayed Draw Commitment**” shall mean, with respect to each Lender, the commitment of such Lender to make Second Delayed Draw Loans hereunder as set forth on Annex I, or in the Assignment and Acceptance pursuant to which such Lender assumed its Second Delayed Draw Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.01(c) or Section 2.07(b) and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The total amount of the Second Delayed Draw Commitments is \$15.0 million.

“**Second Delayed Draw Commitment Period**” shall mean the period from and including the Closing Date to the Final Maturity Date.

“**Second Delayed Draw Loans**” shall have the meaning assigned to such term in Section 2.01(c).

“**Second Delayed Draw Termination Date**” shall mean the earliest to occur of (i) the date the Second Delayed Draw Commitments are permanently reduced to zero pursuant to Section 2.01(c), Section 2.07(b) or the last paragraph of Section 2.01, and (ii) the Final Maturity Date.

“**Secured Obligations**” shall mean (a) the Obligations and (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Hedging Agreement entered into with any counterparty that is a Secured Party.

“**Secured Parties**” shall mean, collectively, the Administrative Agent, the Collateral Agent and the Lenders.

“**Securities Act**” shall mean the Securities Act of 1933.

“**Security Agreement**” shall mean a Security Agreement among the Loan Parties and the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof and hereof.

“**Security Documents**” shall mean the Security Agreement, the Control Agreements and each other security document or pledge agreement delivered in accordance with applicable local or foreign law to grant a valid, perfected security interest in any property as collateral for the Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement or any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest or lien on any property as collateral for the Obligations.

“**Senior Liens**” shall have the meaning assigned to such term in Section 2.18(d).

“**Statutory Reserves**” shall mean, for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against “Eurocurrency liabilities” (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

“**Subsequent Milestone Period**” shall mean any period that begins no earlier than June 22, 2012 during which Net Government Receivables are greater than the aggregate principal amount of Second Delayed Draw Loans to be provided to the Borrower.

“**Subsidiary**” shall mean, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or of one or more Subsidiaries of such Person (or any combination thereof).

“**Supplemental Budget**” shall have the meaning assigned to such term in Section 5.15(a).

“**Taxes**” shall mean any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings (together with any interest, penalties and other additions thereto) now or hereafter imposed by any Governmental Authority.

“**Type**,” shall mean, when used in reference to a Loan, whether the rate of interest on such Loan, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

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

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

“**United States Trustee**” shall mean the representative of the Office of the United States Trustee from time to time participating in the Chapter 11 Cases.

“**Variance Report**” shall have the meaning assigned to such term in Section 5.15(a).

“**Voting Stock**” of any Person as of any date shall mean the Equity Interests of such Person that are at the time entitled to vote in the election of the Board of Directors of such Person.

“**Withdrawal Liability**” shall mean liability to a Multiemployer plan as a result of a complete or partial withdrawal from such Multiemployer plan, as such terms are defined in Part I Subtitle E of Title IV of ERISA.

Section 1.02. **Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The phrase “Material Adverse Effect” shall be deemed to be followed by the phrase “individually or in the aggregate.” The words “asset” and “property” shall be construed to have the same meaning and effect. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Loan Document), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless otherwise indicated and (e) any reference to any law or regulation shall (i) include all statutory and regulatory provisions consolidating, amending, replacing or interpreting or supplementing such law or regulation, and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.02 shall apply, *mutatis mutandis*, to all Loan Documents.

Section 1.03. **Rounding.** Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number.

ARTICLE II. THE CREDITS

Section 2.01. **Commitments.**

Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly:

(a) on the Closing Date to make loans in one drawing in an aggregate principal amount not to exceed its Interim Date Commitment (such loans, individually, an “**Interim Date Loan**” and, collectively, the “**Interim Date Loans**”); *provided* that the Interim Date Loans made by all Lenders shall be up to an amount equal to, but shall not exceed, in the aggregate, the Interim Funding Amount and no Interim Date Loans shall be made in excess of the Interim Funding Amount;

(b) during the First Delayed Draw Commitment Period, but only on or after the Initial Milestone Date, subject to the terms and conditions hereof, to make loans in one drawing (such loans, individually, a “**First Delayed Draw Loan**” and, collectively, the “**First Delayed Draw Loans**”) to the Borrower in an aggregate principal amount specified in the applicable Borrowing Request, but in any event shall not exceed such Lender’s First Delayed Draw Commitment; and

(c) during the Second Delayed Draw Commitment Period, but only on or after the Initial Milestone Date and during the Subsequent Milestone Period, subject to the terms and conditions hereof, to make loans in one drawing (such loans, individually, a “**Second Delayed Draw Loan**” and, collectively, the “**Second Delayed Draw Loans**”) to the Borrower in an aggregate principal amount specified in the applicable Borrowing Request, but in any event shall not exceed such Lender’s Second Delayed Draw Commitment.

Notwithstanding the foregoing, (x) no Interim Date Loan shall be made if, as a result of the making of such Loan, (i) the aggregate principal amount of Interim Date Loans made by any Lender under Section 2.01(a) would exceed such Lender’s Interim Date Loan Commitment hereunder, (ii) the aggregate principal amount of Interim Date Loans made by all Lenders under Section 2.01(a) would exceed the aggregate Interim Date Commitments of all Lenders hereunder, or (iii) the aggregate principal amount of Interim Date Loans made by all Lenders under Section 2.01(a) would exceed Facility Availability; (y) no First Delayed Draw Loan shall be made if, as a result of the making of such Loan, (i) the aggregate principal amount of First Delayed Draw Loans made by any individual Lender under Section 2.01(b) would exceed such Lender’s First Delayed Draw Commitments hereunder, (ii) the aggregate principal amount of First Delayed Draw Loans made by all Lenders under Section 2.01(b) would exceed the aggregate First Delayed Draw Commitments of all Lenders hereunder, or (iii) the aggregate principal amount of First Delayed Draw Loans made by all Lenders under Section 2.01(b), together with the aggregate principal amount of all Interim Date Loans made under Section 2.01(a), would exceed Facility Availability and (z) no Second Delayed Draw Loan shall be made if, as a result of the making of such Loan, (i) the aggregate principal amount of Second Delayed Draw Loans made by any individual Lender under Section 2.01(c) would exceed such Lender’s Second Delayed Draw Commitments hereunder, (ii) the aggregate principal amount of Second Delayed Draw Loans made by all Lenders under Section 2.01(c) would exceed the aggregate Second Delayed Draw Commitments of all Lenders hereunder, (iii) the aggregate principal amount of Second Delayed Draw Loans made by all Lenders under Section 2.01(c), together with the aggregate principal amount of all Interim Date Loans made under Section 2.01(a) and all First Delayed Draw Loans made under Section 2.01(b), would exceed Facility Availability or (iv) the aggregate amount of Second Delayed Draw Loans made by all Lenders under Section 2.01(c) shall equal or exceed Net Government Receivables as of the date of the funding of such Second Delayed Draw Loans.

Once funded, each Interim Date Loan, each First Delayed Draw Loan and each Second Delayed Draw Loan shall be a “Loan” for all purposes under this Agreement and the other Loan Documents. Each Lender’s (A) Interim Date Commitment shall (i) be reduced on a dollar-for-dollar basis by the amount of

each Interim Date Loan made by it hereunder immediately after the borrowing of such Interim Date Loans pursuant to Section 2.01(a) and (ii) terminate immediately and without further action on the earlier of the funding of Interim Date Loans and the Interim Date Loan Termination Date (B) First Delayed Draw Commitment shall (i) be reduced on a dollar-for-dollar basis by the amount of each First Delayed Draw Loan made by it hereunder immediately after the borrowing of such First Delayed Draw Loans pursuant to Section 2.01(b) and (ii) terminate immediately and without further action on the earlier of the funding of First Delayed Draw Loans and the First Delayed Draw Termination Date and (C) Second Delayed Draw Commitment shall (i) be reduced on a dollar-for-dollar basis by the amount of each Second Delayed Draw Loan made by it hereunder immediately after the borrowing of such Second Delayed Draw Loans pursuant to Section 2.01(c) and (ii) terminate immediately and without further action on the earlier of the funding of Second Delayed Draw Loans and the Second Delayed Draw Termination Date. Amounts paid or prepaid in respect of Loans may not be reborrowed.

Section 2.02. **Loans.** (a) Each Loan shall be made as part of a Borrowing consisting of (i) Interim Date Loans made by the Lenders ratably in accordance with their Interim Date Commitments, (ii) First Delayed Draw Loans made by the Lenders ratably in accordance with their First Delayed Draw Commitments, or (iii) Second Delayed Draw Loans made by the Lenders ratably in accordance with their Second Delayed Draw Commitments; *provided* that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender).

(b) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account as the Administrative Agent may designate from time to time not later than 11:00 a.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by the Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders within two Business Days.

(c) Unless the Administrative Agent shall have received written notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.02(b), and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation, and (ii) in the case of the Borrower, the interest rate applicable at the time to the Loans. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement, and the Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.02(c) shall cease.

Section 2.03. **Borrowing Procedure.** To request the incurrence of the Loans hereunder on the date of such Borrowing, the Borrower shall deliver, by hand delivery or telecopy (or transmit by other electronic transmission), a duly completed and executed Borrowing Request to the Administrative Agent (i) in the case of Eurodollar Loans, not later than [11:00] A.M., New York City time, three Business Days before the date of the proposed Borrowing, and (ii) in the case of ABR Loans, not later than [9:00] A.M., New York City time, on the date of the proposed borrowing. A Borrowing Request received after 9:00 A.M. or 11:00 A.M., New York City time, as applicable, shall be deemed received on the next Business Day. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

- (a) the aggregate amount of such Borrowing [which shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof];
- (b) the Types of Loan requested for such Borrowing;
- (c) the date of such Borrowing, which shall be a Business Day;
- (d) the location and number of the Borrower's account (or such other account as the Borrower may direct) to which funds are to be disbursed; and
- (e) that the conditions set forth in Sections 4.01 and 4.02 are satisfied as of the date of the notice.

Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing and not later than 12:00 Noon, New York City time, on the proposed borrowing date, each Lender shall make available to the Administrative Agent an amount in immediately available funds equal to the Loan to be made by such Lender.

Section 2.04. **Evidence of Debt; Repayment of Loans.** (a) The Borrower hereby unconditionally promise to pay to the Administrative Agent for the account of each Lender, the principal amount of each Loan of such Lender as provided in Section 2.09.

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

(c) The Administrative Agent shall maintain a Register in which it will record (i) the amount of each Loan made hereunder, any Note evidencing such Loan and the Type of such Loan, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts and Register maintained pursuant to Sections 2.04(b) and (c) shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower and the other Loan Parties to pay, and perform, the Loan Obligations in accordance with the Loan Documents and the Pre-Petition Indenture pursuant to the Final Order. In the event of any conflict between the accounts and records

maintained by any Lender and the Register of the Administrative Agent in respect of such entries, the Register shall control in the absence of manifest error.

(e) Any Lender by written notice to the Borrower (with a copy to the Administrative Agent) may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall promptly prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns in the form of Exhibit E (a “**Note**”). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

Section 2.05. **Fees.**

(a) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, a structuring fee equal to \$50,000 payable on the Closing Date and the administrative fees and expenses and such other fees and expenses payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent (the “**Administrative Agent Fees**”).

(b) Arranger Fees. The Borrower agrees to pay, upon the entry of the Interim Order, to the Administrative Agent, for the account of Houlihan Lokey in its capacity as arranger a fee equal to 1.0% of the aggregate amount of the total Commitments in effect on the Closing Date (\$450,000).

(c) Upfront Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Lender an upfront fee equal to 2.0% of the stated principal amount of the sum of the aggregate Loans and Commitments as of the Closing Date, paid in kind to each Lender on a pro rata basis on the Closing Date.

(d) Commitment Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee equal to (i) the average of the daily difference of (x) the total Commitments *minus* (y) the aggregate principal amount of all outstanding Loans *times* (ii) 0.50% per annum for the period from and including the Closing Date to the Final Maturity Date, payable monthly in arrears in cash on the last Business Day of each month and on the Final Maturity Date, commencing on the first of such dates to occur after the Closing Date.

(e) Payment of Fees. All Fees and expenses shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent and, to the extent applicable, for distribution to the Lenders. Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.06. **Interest on Loans.**

(a) ABR Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Eurodollar Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, if there is any overdue amount payable by Borrower hereunder that is not paid when due, whether at stated maturity, upon acceleration or otherwise, the Obligations shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to 2.0% plus the rate otherwise applicable to such Obligation as provided in Section 2.06(a) (the “**Default Rate**”).

(d) Accrued interest on each Loan shall be payable in cash in arrears on each Interest Payment Date; *provided* that (i) interest accrued pursuant to Section 2.06(c) (including interest on past due interest) and all interest accrued but unpaid on or after the Final Maturity Date shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (including, without limitation, any repayment or prepayment pursuant to Section 2.10), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day); *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any Insolvency Proceeding.

Section 2.07. **Termination and Reduction of Commitments.**

(a) **Mandatory Terminations.** The Interim Date Commitments shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date and the Delayed Draw Commitments shall automatically terminate on the Final Maturity Date.

(b) **Optional Terminations and Reductions.** At its option, subject to Section 2.07(c), the Borrower may at any time terminate, or from time to time permanently reduce, the First Delayed Draw Commitments and Second Delayed Draw Commitments; *provided* that each reduction of the Delayed Draw Commitments shall be in an amount that is an integral multiple of \$250,000 and not less than \$500,000.

(c) **Borrower Notice.** The Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the First Delayed Draw Commitments or Second Delayed Draw Commitments under Section 2.07(b) at least [one] Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the First Delayed Draw Commitments or Second Delayed Draw Commitments shall be permanent. Each reduction of the First Delayed Draw Commitments or Second Delayed Draw Commitments shall be made ratably among the Lenders in accordance with their respective First Delayed Draw Commitments and/or Second Delayed Draw Commitments.

Section 2.08. **Interest Elections.**

(a) **Generally.** Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect in its sole discretion different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, the Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any one time.

(b) **Interest Election Notice.** To make an election pursuant to this Section, the Borrower shall deliver, by hand delivery or telecopier (or transmit by other electronic transmission), a duly completed and executed Interest Election Request to the Administrative Agent not later than the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

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

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

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

Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(c) **Automatic Conversion to ABR Borrowing.** If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, the Administrative Agent at the direction of the Required Lenders or the Required Lenders may require, by prior written notice to the Borrower, that (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless

repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.09. **Maturity.** To the extent not previously irrevocably paid in full in cash, all Loans shall be due and payable (and the Borrower agrees to pay all Loan Obligations in full) on the Final Maturity Date.

Section 2.10. **Optional and Mandatory Prepayments of Loans.**

(a) **Optional Prepayments.** The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of Sections 2.10(e) and (f). Each partial prepayment shall be in an amount that is an integral multiple of \$250,000 and not less than \$500,000 (or such other integral or minimum amount as may be approved by the Administrative Agent).

(b) **Asset Sales.** Not later than three Business Days following the receipt of any Net Proceeds of any Asset Sale by the Borrower or any of its Subsidiaries that are in excess of \$100,000 and not otherwise specifically enumerated in an Approved Budget, the Borrower shall make prepayments in accordance with Sections 2.10(e) and (f) in an aggregate amount equal to 100% of such Net Proceeds.

(c) **Debt Issuance or Preferred Stock Issuance of Disqualified Interests.** Not later than one Business Day following the receipt of any Net Proceeds of any Debt Issuance or Preferred Stock Issuance that constitutes Disqualified Interests by the Borrower or any of its Subsidiaries, the Borrower shall make prepayments in accordance with Sections 2.10(e) and (f) in an aggregate amount equal to 100% of such Net Proceeds.

(d) **Casualty Events.** Not later than three Business Days following the receipt of any Net Proceeds from a Casualty Event by the Borrower or any of its Subsidiaries, the Borrower shall make prepayments in accordance with Sections 2.10(e) and (f) in an aggregate amount equal to 100% of such Net Proceeds, *provided* that:

(i) so long as no Default or Event of Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that Borrower shall have delivered an Officers' Certificate to the Administrative Agent on or prior to such date stating that such Net Proceeds are required to be used to repair any property in respect of which such Net Cash Proceeds were paid pursuant to an aircraft lease that has been entered into by the Borrower or any of its Subsidiaries and such Officer's Certificate shall specify the aircraft lease and parties thereto; *provided further* that if the property subject to such Casualty Event constituted Collateral under the Security Documents, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Section 5.12; and if any portion of such Net Cash Proceeds shall not be so applied within 12-month from the receipt by the Borrower or any of its Subsidiaries, such unused portion shall be applied on the last day of such period as a mandatory prepayment in accordance with Sections 2.10(e) and (f).

(e) **Application of Prepayments.** Prior to any optional or mandatory prepayment hereunder, Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.10(f) subject to the provisions of this

Section 2.10(e). So long as no Event of Default shall have occurred and be continuing, (a) any prepayments of the Loans pursuant to (i) Section 2.10(a) shall be applied to the Loans as specified by the Borrower, or (ii) Section 2.10(b), (c), (d) or (e) shall be applied to *first*, to fees and reimbursable expenses of the Agents and the Lenders then due and payable pursuant to the Loan Documents; *second* to interest and other fees payable hereunder on a *pro rata* basis; *third*, to the principal balance of Loans outstanding hereunder until the same shall have been repaid in cash in full; *fourth*, to reduce on a *pro rata* basis any remaining Commitments; *fifth*, to repay any other outstanding Obligations other than the Roll-Up Notes; *sixth*, subject to the Final Order, to interest then due and payable on the Roll-Up Notes; and *seventh*, subject to the Final Order, to repay the Roll-Up Notes until paid in full.

Amounts to be applied pursuant to this Section 2.10 to the prepayment of Loans shall be applied first to reduce outstanding ABR Loans and then any amounts remaining after each such application shall be applied to prepay Eurodollar Loans. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding (an “**Excess Amount**”), only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of the Borrower, the Excess Amount shall be either (A) deposited in an escrow account on terms reasonably satisfactory to the Collateral Agent and applied to the prepayment of Eurodollar Loans on the last day of the then next-expiring Interest Period for Eurodollar Loans; *provided* that (i) interest in respect of such Excess Amount shall continue to accrue thereon at the rate provided hereunder for the Loans which such Excess Amount is intended to repay until such Excess Amount shall have been used in full to repay such Loans and (ii) at any time while an Event of Default has occurred and is continuing, the Administrative Agent may, and upon written direction from the Required Lenders shall, apply any or all proceeds then on deposit to the payment of such Loans in an amount equal to such Excess Amount or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.13.

(f) Notice of Prepayment. The Borrower shall notify the Administrative Agent by written notice of any prepayment hereunder not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable. Each such notice shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Such notice to the Lenders may be by electronic communication. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.10. All prepayments pursuant to this Section 2.10 shall be accompanied by payment in cash of accrued but unpaid interest on the principal amount of Loans so prepaid.

Section 2.11. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

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

(b) any Lender shall have reasonably determined (which determination shall be conclusive and binding upon all parties hereto but shall be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its Eurodollar Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental

rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause such Lender material hardship, as a result of contingencies occurring after the date of this Agreement which materially and adversely affect the London interbank market or the position of such Lender in that market;

then the Administrative Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.12. **Yield Protection.**

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

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

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes indemnified under Section 2.15 and any Excluded Tax (it being agreed, for the avoidance of doubt, that this Section 2.12 shall not provide a double recovery of any amount indemnified under Section 2.15)); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such Lender's holding company, if any, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

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

(c) **Certificates for Reimbursement.** A certificate as to any additional amounts payable as specified in paragraph (a) or (b) of this Section 2.12 submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.12, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.12 for any amounts incurred more than six months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; and *provided* that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.12 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.13. **Breakage Payments.** In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto, or (c) the assignment of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16(b), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 5 days after receipt thereof.

Section 2.14. **Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) **Payments Generally.** The Borrower shall make each payment (whether of principal, interest or fees, or of amounts payable under Sections 2.12, 2.13, 2.15 or 10.03 or otherwise) required to be made by them hereunder or under any other Loan Document on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to [1:00] p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on

any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at [_____] Attn: [_____] , except that payments pursuant to Sections 2.12, 2.13, 2.15 or 10.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in Dollars.

(b) Pro Rata Treatment.

(i) Each payment by the Borrower of interest in respect of the Loans shall be applied to the amounts of such obligations owing to the Lenders pro rata according to the respective amounts then due and owing to the Lenders.

(ii) Each payment on account of principal of the Loans shall be allocated among the Lenders pro rata based on the principal amount of the Loans held by the Loan Lenders.

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

(d) Sharing of Set-Off. If any Lender shall, by exercising any right of setoff or counterclaim (including pursuant to Section 10.08) or otherwise (including by exercise of its rights under the Security Documents), obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender), then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(ii) the provisions of this Section 2.14(d) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 2.14(d) shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(d) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(d) to share in the benefits of the recovery of such secured claim.

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

(f) Lender Default. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(b), 2.14(e), or 10.03(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.15. Taxes. (a) Payments Free of Taxes. All payments made by or on behalf of the Loan Parties under this Agreement and the other Loan Documents shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes unless required by applicable law. If any Taxes or Other Taxes are required by applicable law to be withheld from any amounts payable to the Administrative Agent or any Lender hereunder or under any other Loan Document, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after all required withholdings of Taxes and Other Taxes, including withholdings applicable to additional amounts payable under this paragraph) interest and any such other amounts at the rates and in the amounts specified in this Agreement or such other Loan Document, *provided, however*, that no Loan Party shall be required to increase any such amounts payable to any Lender with respect to any Taxes (i) that are net income Taxes (or franchise Taxes in lieu of net income Taxes) or branch profit Taxes imposed on any Lender by the jurisdiction under the laws of which such Lender is organized or in which its applicable lending office is located or in which it conducts business (other than solely, as a result of the making of any Loan or the execution of any Loan Document, or receiving payments thereunder, or exercising its rights or performing its obligations thereunder), (ii) that are attributable to such Lender's failure to comply with the requirements of clause (d) of this Section 2.15, (iii) (other than in the case of a Lender that becomes a Lender pursuant to Section 2.16(b)) that are United States federal withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or at the time such Lender changes its applicable lending office), except to the extent that, in the case of an assignment, such Lender's assignor was entitled, at the time of assignment, or, in the case of a change in lending office, such Lender was entitled, prior to the time of such change, to receive additional amounts pursuant to this paragraph, or (iv) that are United

States federal withholding Taxes imposed by FATCA (collectively, “**Excluded Taxes**”, and all Taxes other than Excluded Taxes, “**Non-Excluded Taxes**”).

(b) Payment of Other Taxes by Borrower. In addition, without limiting the provisions of Section 2.15(a), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Borrower. Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower or any other Loan Party pursuant to Section 2.15(a), (i) the Borrower shall notify the Administrative Agent of any requirement to withhold, deduct or pay such Non-Excluded Taxes or Other Taxes; (ii) the Borrower or such other Loan Party shall pay any such Non-Excluded Taxes or Other Taxes before the date on which penalties attach thereto, such payment to be made, in the case of a liability to pay imposed on a Loan Party, for its own account or, in the case of a liability to pay imposed on the Administrative Agent or a Lender, as the case may be, on behalf of and in the name of the Administrative Agent or such Lender, as the case may be; and (iii) the Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt from the relevant Governmental Authority showing payment thereof as promptly as possible after such payment. If the Borrower or any other Loan Party fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(d) Foreign Lenders. Each Foreign Lender shall deliver to the Borrower and the Administrative Agent two copies of either U.S. Internal Revenue Service Form W-8BEN (or successor form), Form W-8ECI (or successor form), Form W-8IMY (or successor for form) together with all required attachments, or Form W-8EXP (or successor form) or, in the case of a Foreign Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest”, a “Non-Bank Certificate” in the form of Exhibit G-1, G-2, G-3 or G-4 (as applicable) and a Form W-8BEN (or successor form), properly completed and duly executed by such Foreign Lender, claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on payments under this Agreement and the other Loan Documents. Such forms shall be delivered by each Foreign Lender on or before the date it becomes a party to this Agreement. In addition, each Foreign Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form to the Borrower and the Administrative Agent. Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(e) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.15 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund and only so long as no Default or Event of Default then exists), net of all reasonable out-of-pocket

expenses (including any Taxes imposed with respect to such refund) of the Administrative Agent or such Lender, as reasonably determined by the Administrative Agent or such Lender, as applicable, in its sole discretion, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(f) Each Loan Party shall indemnify the Administrative Agent and each Lender within ten days after written demand therefor, for the full amount of any Non-Excluded Taxes or Other Taxes paid by the Administrative Agent or such Lender, as applicable, arising from or relating to this Agreement, any other Loan Document or any payment hereunder or thereunder (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Non-Excluded Taxes or Other Taxes (or interest, additions to tax or penalties applicable thereto) were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender or by the Administrative Agent shall be conclusive absent manifest error.

(g) The agreements in this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(h) Each Lender that is not a Foreign Lender shall furnish to the Borrower and the Administrative Agent, on or prior to the date it becomes a party to this Agreement, two accurate and complete originally executed copies of U.S. Internal Revenue Service Form W-9 (or successor form) establishing that the Lender is not subject to U.S. backup withholding tax.

(i) If a payment made to a Lender hereunder may be subject to U.S. federal withholding tax under the FATCA, such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Borrower or the Administrative Agent to comply with its withholding obligations, to determine that such Lender has complied with such Lender's obligations under the FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this paragraph (i), the term "FATCA" shall include any amendments or successor provisions thereto.

Section 2.16. **Mitigation Obligations; Replacement of Lenders.**

(a) **Mitigation of Obligations.** If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable

pursuant to Section 2.12 or Section 2.15, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense, (iii) would not require such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions, and (iv) would not otherwise be disadvantageous to such Lender. The Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the Administrative Agent shall be conclusive absent manifest error.

(b) Replacement of Lenders. In the event (i) any Lender delivers a certificate requesting compensation pursuant to Section 2.12, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to Section 2.15, (iii) any Lender fails to consent to any amendment, waiver or other modification of any Loan Document requested by the Borrower that requires the consent of 100% of the Lenders or 100% of all affected Lenders and, which, in each case, has been consented to by the Required Lenders or a majority in interest of the affected Lenders, as the case may be, or (iv) any Lender defaults in its obligations to make Loans or other extensions of credit hereunder, the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 10.04(b)), upon notice to such Lender and the Administrative Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all of its interests, rights and obligations under this Agreement to an assignee which shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (x) such assignment shall not conflict with any applicable law, (y) the Borrower shall have received the prior written acknowledgment of the Administrative Agent, which acknowledgment shall not unreasonably be withheld or delayed, and (z) the Borrower or such assignee shall have paid to the affected Lender in immediately available funds an amount equal to the sum of the principal of and interest and any prepayment premium or penalty (if any) accrued to the date of such payment on the outstanding Loans of such Lender affected by such assignment plus all Fees and other amounts owing to or accrued for the account of such Lender hereunder. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.16(b).

Section 2.17. Defaulting Lenders.

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

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

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 2.14 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the

payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee which such Lender would have otherwise been entitled to receive pursuant to this Agreement for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

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

Section 2.18. Super-Priority Nature of Obligations and Lenders' Liens. Each Loan Party represents, warrants, covenants and agrees that:

(a) The priority of the Agents' and Lenders' Liens on the Collateral owned by the Borrower shall be set forth in the Interim Order (or, when applicable, the Final Order).

(b) Upon entry of the Interim Order (or, when applicable, the Final Order), subject only to the Carve-Out, pursuant to Section 364(c)(1) of the Bankruptcy Code, the Secured Obligations shall at all times constitute allowed super-priority administrative expenses of each of the Loan Parties in the Chapter 11 Cases having priority over any and all administrative expenses, diminution claims and all other claims against of each of the Loan Parties, now existing or hereafter arising, including, without limitation, of the kind specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (upon entry of the Final Order), 507(b), 546(c), 726,1114 or any other section of the Bankruptcy Code, shall at all times be senior to the rights of the Loan Parties, the estates of the Loan Parties, and any successor trustee or estate representative in the Chapter 11 Cases or any subsequent proceeding or case under the Bankruptcy Code, and shall be payable in accordance with the terms of the Orders.

(c) Upon entry of the Interim Order (or, when applicable, the Final Order) and subject to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code the Secured Obligations shall be secured by a valid, perfected, binding, continuing, enforceable, non-avoidable, first priority Lien on all unencumbered Collateral, including, without limitation, but subject to entry of the Final Order, the Debtors' Avoidance Actions and the proceeds thereof, whether received by judgment, settlement or otherwise.

(d) Upon entry of the Interim Order (or, when applicable, the Final Order) and subject to the Carve-Out, pursuant to section 364(c)(3) of the Bankruptcy Code, the Secured Obligations shall be secured by a valid, perfected, binding, continuing, enforceable, non-avoidable, junior Lien upon all Collateral that is subject to (x) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date and which are identified on Schedule 6.07(b), and are senior to the Liens securing the obligations of the Loan Parties under the Pre-Petition Indenture and the Pre-Petition Second Lien Credit Agreement, after giving effect to any intercreditor or subordination agreement, (y) valid, enforceable and non-avoidable Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and which are identified on Schedule 6.07(b), and are senior to the Liens securing the obligations of the Loan Parties under the Pre-Petition Indenture and the Pre-Petition Second Lien Credit Agreement, after giving effect to any intercreditor or subordination agreement, in each case, other than Liens which are expressly stated to be primed by the Liens to be granted to the Collateral Agent and the Lenders described in subsection (e) below (subject to such exception, the "**Senior Liens**").

(e) Except as otherwise expressly permitted herein, upon entry of the Interim Order (or, when applicable, the Final Order) and subject to the Carve-Out, pursuant to section 364(d)(1) of the Bankruptcy Code, the Secured Obligations shall be secured by a valid, perfected, binding, continuing, enforceable, non-avoidable senior priming Lien on all Collateral (including, without limitation, Cash Collateral), which Liens shall be senior to (x) the Liens securing the obligations of the Loan Parties under the Pre-Petition Indenture and the Pre-Petition Second Lien Credit Agreement, and (y) except for the Senior Liens, any other Liens in favor of any other Person, including, without limitation, all Liens junior to the Liens securing any or all of the obligations of the Loan Parties under the Pre-Petition Indenture and the Pre-Petition Second Lien Credit Agreement (the Liens referenced in clauses (x) and (y), collectively, the "**Primed Liens**"), which Primed Liens, together with any Liens granted on or after the Petition Date to provide adequate protection in respect of any Primed Liens, shall be primed by and made subject and subordinate to the first priority senior priming Liens securing the Secured Obligations granted pursuant to this subsection (e).

(f) Except as set forth herein or in the Interim Order (or, as applicable, the Final Order), no other claim or Lien having a priority superior or *pari passu* to that granted to Agents and Lenders by the Interim Order (or, as applicable, the Final Order) shall be granted or approved while any Secured Obligations under this Agreement remain outstanding without the prior written consent of the Collateral Agent (acting at the direction of the Required Lenders). Except for the Carve-Out, no costs or expenses of administration shall be imposed against the Secured Parties or any of the Collateral or the secured parties pursuant to the Pre-Petition Indenture and Pre-Petition Second Lien Credit Agreement or any of the Collateral (as defined in the Pre-Petition Indenture) under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and the Loan Parties hereby waive for themselves and on behalf of each of their estates in bankruptcy, any and all rights under sections 105, 506(c) (upon entry of the Final Order) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Secured Parties or the noteholders holding Pre-Petition Senior Secured Notes.

(g) The Liens and claims granted in respect of the Secured Obligations pursuant to this shall be subject and subordinate to the Carve-Out. The term **"Carve-Out Trigger Notice"** shall mean a written notice delivered by the Administrative Agent or its counsel to the Loan Parties' lead counsel, the U.S. Trustee, counsel to the Pre-Petition Second Lien Lenders and lead counsel to the committee of unsecured creditors appointed in the Bankruptcy Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that the Carve-Out is invoked. Following delivery of the Carve-Out Trigger Notice or termination of the DIP Facility and the Loan Parties' authority to use Cash Collateral (as defined in the Orders), but only if such termination occurs prior to the effective date of any plan of liquidation, the Loan Parties shall immediately fund into a segregated account established by the Loan Parties (the **"Carve-Out Account"**) an amount equal to the aggregate amount accrued under the Carve-Out prior to the delivery of the Carve-Out Trigger Notice, plus the amount of the Carve-Out Cap. If there are insufficient funds on the date the Carve-Out Trigger Notice is delivered to fund the full amount of the Carve-Out, including the Carve-Out Cap, into the Carve-Out Account, any additional cash proceeds thereafter received by the Loan Parties, from whatever source, shall be transferred by the Loan Parties into the Carve-Out Account prior to making any distributions to creditors. All funds in the Carve-Out Account shall be used first to pay (i) all unpaid fees required to be paid in the Bankruptcy Cases under 28 U.S.C. § 1930 and 31 U.S.C. § 3717, whether arising prior to or after the delivery of the Carve-Out Trigger Notice; (ii) all reasonable and documented unpaid fees, costs, disbursements and expenses of professionals retained by the Loan Parties in the Bankruptcy Cases (collectively, the **"Debtors' Professionals"**) that are incurred and earned prior to the first business day after the delivery by the Administrative Agent of a Carve-Out Trigger Notice, are allowed by the Bankruptcy Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any retainers and any available funds remaining in the Loan Parties' estates for such creditors; (iii) all reasonable and documented unpaid fees and expenses of professionals retained by the committee of unsecured creditors in the Bankruptcy Cases (collectively, the **"Committee's Professionals"**) that are incurred and earned prior to the first business day after the delivery by the Administrative Agent of a Carve-Out Trigger Notice, are allowed by the Bankruptcy Court under sections 105(a), 330 or 331 of the Bankruptcy Code or otherwise (whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice) and remain unpaid after application of any available funds remaining in the Loan Parties' estates for such creditors, and then, to pay all reasonable and documented unpaid fees, costs, disbursements and expenses of the Debtors' Professionals and Committee's Professionals that are incurred and earned on or after the first business day after the delivery by the Lenders of a Carve-Out Trigger Notice, that are allowed by the

Bankruptcy Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code or otherwise and remain unpaid after application of any retainers and any available funds remaining in the Loan Parties' estates for such creditors and in an aggregate amount not to exceed the Carve-Out Cap (plus all unpaid fees, costs, disbursements and expenses of the Debtors' Professionals and Committee's Professionals allowed by the Bankruptcy Court at any time that were incurred on or prior to the first business day following the delivery of the Carve-Out Trigger Notice). All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Liens, the Pre-Petition Liens and Adequate Protection Replacement Liens such that, upon final payment of all allowed amounts due and owing under the Carve-Out, including the Carve-Out Cap, as determined by further order of the Court, any funds remaining in the Carve-Out Account shall be remitted to the Debtors and governed by the terms of this Interim Order. Notwithstanding anything to the contrary in this Interim Order, all liens and claims granted pursuant to the Interim Order, as well as all liens and claims granted pursuant to any Pre-Petition Credit Obligations, shall be subject to the Carve-Out.

Section 2.19. **Payment of Obligations.** Subject to the Orders and Section 8.01 hereof, upon the Final Maturity Date (whether by acceleration or otherwise) of any of the Secured Obligations under this Agreement or any of the other Loan Documents or Pre-Petition Indenture pursuant to the Final Order, Agents and Lenders shall be entitled to immediate payment in full in cash of such Secured Obligations without further application to or order of the Bankruptcy Court.

Section 2.20. **No Discharge; Survival of Claims.** Loan Parties agree that unless the Secured Obligations have been indefeasibly paid in full in cash at such time (a) the Secured Obligations hereunder shall not be discharged by the entry of an order confirming any plan of reorganization in any Chapter 11 Case (and Loan Parties pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waive any such discharge) and (b) the super-priority administrative expense claim granted to Secured Parties pursuant to the Orders and described in Section 2.18 and the Liens granted to Secured Parties pursuant to the Orders and described in Section 2.18 shall not be affected in any manner by the entry of an order confirming any plan of reorganization in any Chapter 11 Case.

Section 2.21. **Release.** The Loan Parties hereby acknowledge effective upon entry of each Order, that Loan Parties have no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Loan Parties' liability to prepay or repay the Agents or any Lender as provided in this Agreement or other Loan Documents or Pre-Petition Indenture pursuant to the Final Order or to seek affirmative relief or damages of any kind or nature from the Agents or any Lender. The Loan Parties, in their own right, on behalf of each of their bankruptcy estates and on behalf of all their successors, assigns, Subsidiaries, Guarantors and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby, effective upon entry of the Final Order, fully, finally and forever release and discharge the Agents and the Lenders and all of Agents' and Lenders', past and present officers, directors, agents, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them (collectively, the "**Released Parties**") of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or

other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Loan Documents, the Orders and the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing; *provided*, that nothing herein shall be deemed to be a release of any Released Party from its obligations under the Loan Documents, the Orders or any order of the Bankruptcy Court applicable to such Person, *provided, further*, that nothing contained herein shall be deemed to limit or modify the rights granted to third parties under the Orders.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders that as of the Closing Date:

Section 3.01. **No Material Misstatements.** No information, report, certificate, Borrowing Request, exhibit or schedule furnished by or on behalf of any Company to the Administrative Agent or any Lender in connection with any Loan Document or included therein or delivered pursuant thereto, taken as a whole, contained any untrue statement of a material fact, or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3.02. **Subsidiaries.** As of the Closing Date, each corporation, partnership, or other entity in which the Borrower, directly or indirectly through any of its Subsidiaries, owns more than fifty percent (50%) of any class of Equity Interests is listed on Schedule 3.02 and Schedule 3.02 correctly sets forth as of the Closing Date the jurisdiction of organization of, and the issued and outstanding Equity Interests, and the owner of such Equity Interests, of each Subsidiary of the Borrower. Each Subsidiary of the Borrower that is a Foreign Subsidiary has an asterisk (“*”) next to its name on such schedule.

Section 3.03. **Corporate Existence.** Each Company (i) has been duly organized or formed, as the case may be, is validly existing and is in good standing under the laws of its jurisdiction of organization, (ii) subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), has all requisite power and authority to carry on its business as now conducted and to own, lease and operate its properties and assets, and (iii) is duly qualified or licensed to do business and is in good standing as a foreign corporation, partnership or other entity as the case may be, authorized to do business in each jurisdiction in which the nature of such businesses or the ownership or leasing of such properties requires such qualification, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.04. **Equity Interests.** (a) All of the issued and outstanding shares of capital stock of the Borrower have been duly authorized and validly issued, are fully paid and nonassessable, and were not issued in violation of, and are not subject to, any preemptive or similar rights.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of the outstanding shares of capital stock and other Equity Interests of each of the Borrower’s Subsidiaries are owned, directly or indirectly, by the Borrower, free and clear of all Liens, other than Permitted Liens and those imposed by the Securities Act and the securities or “Blue Sky” laws of certain domestic or foreign jurisdictions and the Loan Documents.

(c) Except as disclosed in Schedule 3.04, there are no outstanding (A) options, warrants or other rights to purchase or subscribe for any Equity Interests of, or any securities convertible into or exchangeable for, or (B) agreements, contracts, arrangements or other obligations of any Company to issue or (C) other rights to convert any obligation into or exchange any securities for, in the case of each of clauses (A) through (C) shares of capital stock of or other ownership or Equity Interests in any Company.

Section 3.05. **Authorization; Enforceability.** (a) Subject to the entry of the Interim Order (or the Final Order, when applicable) by the Bankruptcy Court, each Loan Party has all the requisite corporate power or other power and authority, to execute, deliver and perform its respective obligations under the Loan Documents to which it is a party and to consummate the transactions contemplated thereby.

(b) Subject to the entry of the Interim Order (or the Final Order, when applicable), by the Bankruptcy Court, the Loan Documents have been duly and validly authorized, executed and delivered by each of the Loan Parties party thereto. Subject to the entry of the Interim Order (or the Final Order, when applicable), by the Bankruptcy Court, each of the Loan Documents, when executed and delivered by the Loan Parties party thereto, will constitute a legal, valid and binding obligation of each such Loan Party, enforceable against such Loan Party in accordance with its terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

Section 3.06. **No Conflicts; No Default.** (a) Upon entry of the Interim Order (or the Final Order, when applicable), (a) no Company is in violation of its Organizational Documents and (b) no Company is (i) in violation of any Federal, state, local or foreign statute, law (including, without limitation, common law) or ordinance, or any judgment, decree, rule, regulation or order of any Governmental Authority applicable to any of them or any of their respective properties or (ii) in breach of or default under any bond, debenture, note or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other agreement or instrument to which any of them is a party or by which any of them or their respective properties is bound (collectively, "**Applicable Agreements**"), except, in the case of each of preceding clauses (i) and (ii), for such violations, breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Upon entry of the Interim Order (or the Final Order, when applicable), neither the execution, delivery or performance by any Loan Party of the Loan Documents to which it is a party nor the consummation of any transactions contemplated therein will conflict with, violate, constitute a breach of or a default (with the passage of time or otherwise) under, require the consent of any Person (other than consents already obtained and in full force and effect) under, or result in the imposition of (or the obligation to create) a Lien on any assets of any Company under or pursuant to the Organizational Documents of such Loan Party, any Federal, state, local or foreign statute, law (including, without limitation, common law) or ordinance, or any judgment, decree, rule, regulation or order of any Governmental Authority applicable to such Loan Party or any of its properties or any Applicable Agreement, except for such conflicts, violations, breaches, defaults, lack of any consents or imposition of Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Upon entry of the Interim Order (or the Final Order, when applicable), no consent, approval, authorization or order of any Governmental Authority or third party is required for the incurrence of the Loans by the Borrower. No injunction or order has been issued that would prevent or suspend the effectiveness of the Loan Documents in any jurisdiction.

(d) Upon entry of the Interim Order (or the Final Order, when applicable), no Default or Event of Default exists.

Section 3.07. **Litigation; Compliance with Legal Requirements.** (a) Other than the Chapter 11 Cases, there is no action, claim, suit, demand, hearing, notice of violation or deficiency, or proceeding, domestic or foreign (collectively, “**Proceedings**”), pending or, to the knowledge of any Company, threatened, that either (i) seeks to restrain, enjoin, prevent the consummation of, or otherwise challenge any of the Loan Documents or any of the transactions contemplated therein, or (ii) would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, except in the case of preceding clauses (i) and (ii), as set forth on Schedule 3.07(a).

(b) Each Company possesses all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and has made all declarations and filings with, all Governmental Authorities, presently required or necessary to own or lease, as the case may be, and to operate their respective properties and to carry on their respective businesses as now or proposed to be conducted (“**Permits**”), except where the failure to obtain such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and no Company has received any notice of any proceeding relating to revocation or modification of any such Permit, except where such revocation or modification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as set forth on Schedule 3.07(b).

Section 3.08. **Properties.** Each Company has good and marketable title to all real property owned by it and good title to all personal property owned by it and good and valid title to all leasehold estates in real property and personal property being leased by it and all such property (real and personal) and interests are free and clear of all Liens, except (i) Permitted Liens, (ii) such as do not materially interfere with the use made and proposed to be made of such property by any Company or (iii) such as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.09. **Taxes.** All income Tax returns and material other returns required to be filed by the Companies have been filed and all such returns are true, complete, and correct in all material respects. All material Taxes that are due from the Companies have been paid other than those (i) currently payable without penalty or interest, (ii) being contested in good faith and by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP or (iii) the nonpayment of which is permitted by the Bankruptcy Code. To the knowledge of each Company, there are no actual or proposed Tax assessments against the Companies that would, individually or in the aggregate, have a Material Adverse Effect. The accruals and reserves on the books and records of the Companies in respect of any material Tax liability for any period not finally determined are adequate to meet any assessments of Tax for any such period.

Section 3.10. **Intellectual Property.** Each Company owns, or is licensed under, and has the right to use, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, “**Intellectual Property**”) necessary for the conduct of its businesses as now conducted and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of each Company, no

claims or notices of any potential claim have been asserted by any person challenging the use of any such Intellectual Property by any Company or questioning the validity or effectiveness of the Intellectual Property or any license or agreement related thereto (other than any claims that, if successful, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect). To the knowledge of each Company, the use of such Intellectual Property by any Company will not infringe on the Intellectual Property rights of any other person, except for such use that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.11. **Financial Statements; Absence of Material Adverse Change.** (a) The Companies maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) material transactions are executed in accordance with management's general or specific authorization, (ii) material transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any material differences. Except as described in Schedule 3.11(a), since the end of the Borrower's and its Subsidiaries' most recent audited Fiscal Year, there has been (1) no material weakness in the Companies' internal control over financial reporting (whether or not remediated) and (2) no change in the Companies' internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Companies' internal control over financial reporting.

(b) Except as set forth on Schedule 3.11(b), the audited consolidated financial statements and related notes of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2010 and December 31, 2009 and the unaudited consolidated financial statements and related notes of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011 present fairly in all material respects the financial position, results of operations and cash flows of the Borrower and its Subsidiaries, as of the respective dates and for the respective periods to which they apply and have been prepared in accordance with GAAP (subject, in the case of the unaudited financial statements, to normal year-end audit adjustments and the absence of footnotes), it being understood that financial statements for the fiscal year ended December 31, 2011 shall not have asset impairments as required by GAAP, and the requirements of Regulation S-X. The financial projections provided to the Lenders prior to the Closing Date have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable when made.

(c) Except as set forth on Schedule 3.11(c), since December 31, 2011, there has not been any Material Adverse Effect.

Section 3.12. **ERISA.** Neither any Company nor any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA, or has any actual or contingent liability, with respect to any Plans or Foreign Pension Plans. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in material liability to any Company or any ERISA Affiliate. The aggregate liabilities of the Companies and the ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent Fiscal Year of each such Multiemployer Plan, did not exceed \$25.0 million.

Section 3.13. **Labor Matters.** Except as set forth on Schedule 3.13 or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no labor problem or dispute with the employees of any Company exists or to the knowledge of any Company, is threatened or imminent, and no Company is aware of any existing, threatened or imminent, labor

disturbance by the employees of any of its principal suppliers, contractors or customers. To each Company's knowledge, there is no employment-related charge, complaint, grievance, investigation, unfair labor practice claim, or inquiry of any kind, pending against any Company that could, individually or in the aggregate, reasonably be expected have a Material Adverse Effect, and each Company does not know of any valid basis for such a charge, complaint, grievance, investigation, unfair labor practice claim, or inquiry.

Section 3.14. **Federal Reserve Regulations.** (a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing, buying or carrying margin stock (within the meaning of Regulation U).

(b) No part of the proceeds of the Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Collateral pursuant to the Security Documents does not violate such regulations.

Section 3.15. **Investment Company Act, etc.** No Company is (i) an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940, as amended, or (ii) subject to regulation under any applicable law (other than Regulation X) that limits its ability to incur, create, assume or permit to exist Indebtedness or grant any Contingent Obligation in respect of Indebtedness.

Section 3.16. **Environmental Matters.** Except as set forth on Schedule 3.16, each Company (i) is in compliance with any and all Environmental Laws, (ii) has received and is in compliance with all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its respective businesses and (iii) has not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of Hazardous Materials, in each case except where such non-compliance with Environmental Laws, failure to receive and comply with required permits, licenses or other approvals, or liability would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, whether or not arising from transactions in the ordinary course of business. No Company has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Section 3.17. **Collateral.** (a) Upon entry of the Interim Order (and when applicable, the Final Order) by the Bankruptcy Court, the Interim Order (and when applicable, the Final Order) the Security Agreement will create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof enforceable against the Loan Parties in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). Upon entry of the Interim Order (and when applicable, the Final Order) by the Bankruptcy Court, the Interim Order (and when applicable, the Final Order), the Liens created by the Orders shall constitute fully perfected Liens on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof (other than to the extent otherwise permitted under the Loan Documents) in each case with the priority set forth in Section 2.18 and the Orders (except as otherwise expressly set forth in this Agreement), in each case prior and superior in right to any other Person (except Permitted Liens and the Carve-Out).

(b) No Loan Party owns in fee any real property located in the United States.

Section 3.18. **Certificates.** Each certificate signed by any Officer of any Company and delivered to any Lender shall be deemed a representation and warranty by such Company (and not individually by such officer) to such Lender with respect to the matters covered thereby.

Section 3.19. **Insurance.** Each Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Companies are engaged. No Company has been refused any insurance coverage sought or applied for, and no Company has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect. Schedule 3.19 sets forth the material insurance policies of each Company as of the Closing Date.

Section 3.20. **Money Laundering Laws; Foreign Corrupt Practices Act.** (a) (i) No Company or, to the knowledge of any Company, no director, officer, agent, employee or Affiliate of any Company, is aware or has taken any action, directly or indirectly, that would result in a violation by any such Persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; (ii) each Company and, to the knowledge of each Company, its Affiliates, have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith and with any other applicable anticorruption and antibribery laws; (iii) no civil or criminal penalties have been imposed on any Company or any of its Affiliates with respect to violations of the FCPA or any other applicable anticorruption or antibribery laws nor have any voluntary disclosures been submitted to the U.S. Government or any other Governmental Authority relating to the alleged violations by any Company or any of its Affiliates of the FCPA or any other applicable anticorruption or antibribery laws; and (iv) neither the U.S. Government nor any other Governmental Authority has notified any Company or any of its Affiliates in writing of any actual or alleged violation or breach of the FCPA or any other applicable anticorruption or antibribery law, except in the case of preceding clauses (i), (ii), (iii) and (iv) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) (i) The operations of each Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”); and (ii) no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Company with respect to the Money Laundering Laws is pending or, to the knowledge of any Company, threatened, except in the case of preceding clauses (i) and (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 3.20, no Company or, to the knowledge of any Company, no director, officer, agent, employee or Affiliate of any Company, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the

Treasury (“**OFAC**”); and no Company will directly or indirectly use the proceeds of the Loans hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

Section 3.21. **Use of Proceeds.** The Borrower will use the proceeds of the Loans to pay related fees, commissions and expenses in a manner consistent with the Approved Budget, including to pay (a) Post-Petition and approved (by the Bankruptcy Court, with the express consent of the Administrative Agent at the direction of the Required Lenders) Pre-Petition operating expenses and other working capital, general corporate needs and financing requirements of) the Borrower and its Subsidiaries, (b) certain transaction fees, costs and expenses (including any Fees in respect of the Commitments and Loans hereunder) and (c) certain other costs and expenses related to the administration of the Chapter 11 Cases. Notwithstanding anything to the contrary in this Agreement and subject to the limitations set forth in the Orders, no Loans, Cash Collateral, the Carve-Out proceeds or any other proceeds of any of the foregoing shall be used to: (i) pay interest and principal with respect to any Indebtedness (other than Indebtedness incurred under this Agreement); *provided, however*, for the avoidance of doubt, nothing in this Section 3.21 shall limit the Debtors’ ability to make payments in respect of adequate protection to the holders of the Pre-Petition Senior Secured Notes and the Pre-Petition First Lien Trustee, pursuant to the Orders, (ii) finance in any way any adversary action, investigation, suit, arbitration, proceeding, application, motion or other litigation of any type relating to or in connection with the Pre-Petition Indenture or any of the Pre-Petition Loan Documents or instruments entered into in connection therewith, including, without limitation, any challenges to the Pre-Petition First Lien Obligations, or the Pre-Petition Second-Lien Credit Agreement or any instruments entered into in connection therewith, including, without limitation, any challenges to the Pre-Petition Second Lien Obligations or the validity, perfection, priority, or enforceability of any Lien securing such claims or any payment made thereunder, (iii) finance in any way any investigation, action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of the Agents, or the Lenders or their rights and remedies under this Agreement, the other Loan Documents, the Interim Order or the Final Order, (iv) seek authorization for any party to use any of the Cash Collateral of the Secured Parties except as set forth in the Orders or (v) except as otherwise permitted hereunder, obtain Liens that are senior to, or *pari passu* with, the Liens of the Collateral Agent, the Lenders and the other Secured Parties in the Collateral or any portion thereof.

Section 3.22. **Anti-Terrorism Law.**

(a) No Loan Party and, to the knowledge of the Loan Parties, no Company and none of its Affiliates is in violation in any material respect of any Requirement of Law relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) To the knowledge of the Loan Parties, no Company and no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(ii) a person that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list; or

(iii) any other person with whom U.S. persons may not transact or deal under the provisions of 31 C.F.R. Chapter V or any legal restriction, including legislation, Executive Order, or regulation, administered by the U.S. Treasury Department’s Office of Foreign Assets Control.

(c) To the knowledge of the Loan Parties, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE IV. CONDITIONS TO LOANS

Section 4.01. **Conditions to Interim Date Loans.** The obligation of each Lender to make the Interim Date Loans requested to be made by it on the Closing Date shall be subject to the prior or concurrent satisfaction (or waiver) of each of the conditions precedent set forth in this Section 4.01.

(a) **Loan Documents.** There shall have been delivered to the Administrative Agent a properly executed counterpart of each of the Loan Documents.

(b) **Corporate Documents.** The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the incurrence of the Loans hereunder and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate required by this clause (i)); and

(ii) a certificate as to the good standing of each Loan Party (in so-called “long-form”, if available) as of a recent date, from such Secretary of State.

(c) **Officer’s Certificate.** The Administrative Agent shall have received a certificate, dated the Closing Date and signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Borrower, confirming compliance with the conditions precedent set forth in this Section 4.01.

(d) Opinions of Counsel. The Administrative Agent shall have received, on behalf of itself, the Collateral Agent and the Lenders, a favorable written opinion of each of (x) Kirkland & Ellis LLP, special New York counsel for the Borrower, substantially to the effect set forth in Exhibit H-1, (y) Brian Gillam, Senior Vice President and the General Counsel of the Loan Parties, substantially to the effect set forth in Exhibit H-2, in each case (A) dated the Closing Date, (B) addressed to the Agents and the Lenders and (C) covering such matters relating to the Loan Documents as the Administrative Agent shall reasonably request at the direction of the Required Lenders.

(e) Consents. The Lenders shall be satisfied that all requisite Governmental Authorities, equityholders and material third parties shall have approved, authorized or consented to the transactions contemplated by the terms of this Agreement, and all applicable waiting periods shall have expired without any action being taken by any applicable Governmental Authority that could reasonably be expected to restrain, prevent or otherwise impose adverse conditions on any of the transactions contemplated by the terms of this Agreement.

(f) No Proceedings. No action shall have been taken and no applicable law shall have been enacted, adopted or issued that would, as of the Closing Date, prevent the consummation of the transactions contemplated by the terms of this Agreement. No injunction, restraining order or order of any nature by a Governmental Authority shall have been issued as of the Closing Date that would prevent or materially interfere with the consummation of the transactions contemplated by the terms of this Agreement. No Proceeding shall be pending or, to the knowledge of any Company after due inquiry, threatened other than Proceedings that would not, individually or in the aggregate, have a Material Adverse Effect.

(g) Fees. The Administrative Agent (for itself and on behalf of the Lenders) and Houlihan Lokey shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all reasonable and invoiced out-of-pocket expenses (including the reasonable legal fees and expenses of Latham & Watkins LLP, special counsel to the Administrative Agent and the Lenders) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(h) Insurance. The Administrative Agent shall have received a copy of the insurance policies required by Section 5.06.

(i) Chapter 11 Case Administration.

(i) The Administrative Agent and Required Lenders shall have approved a motion in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders seeking approval of the Commitments and Loans made hereunder;

(ii) The Interim Order shall have been entered by the Bankruptcy Court no later than February 29, 2012;

(j) Closing Date. The Closing Date shall be no later than March 2, 2012.

Section 4.02. Conditions to All Loans. The obligation of each Lender to make Loans (including the Interim Date Loans) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) Notice. The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03).

(b) Bank Regulatory Documentation. At least two (2) Business Days prior to the funding of any Loans, the Administrative Agent and the Lenders shall have received all documentation and other information required by bank regulatory authorities under or in respect of applicable Money Laundering Laws or other applicable law related to “know-your-customer” matters, including the Executive Order that were requested at least three (3) Business Days prior to the Closing Date.

(c) No Default. The Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after giving effect to any Loans made by the Lenders to the Borrower pursuant to Section 2.01 and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing on such date.

(d) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article III and in each other Loan Document shall be true and correct in all material respects on the date that Loans are made by the Lenders to the Borrower pursuant to Section 2.01 with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date); *provided* that any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(e) No Legal Bar. No judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it. No injunction or other restraining judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans hereunder.

(f) Bankruptcy Matters. At the time of the making of any Loan, (i) with respect to any Loan made prior to the entry and effectiveness of the Final Order, the Interim Order shall be effective, shall not have terminated or expired and shall not have been stayed, reversed, vacated, amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent and (ii) with respect to any Loan made after entry and effectiveness of the Final Order, the Final Order shall be effective, shall not have terminated or expired and shall not have been stayed, reversed, vacated, amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent.

Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Loan shall constitute a representation and warranty by the Borrower and each other Loan Party that on the date of such Loan (both immediately before and after giving effect to such Loan and the application of the proceeds thereof) the conditions contained in Sections 4.02(b)-(e) have been satisfied. Borrower shall provide such information (including calculations in reasonable detail of the covenants in Section 6.10) as the Administrative Agent may reasonably request to confirm that the conditions in Sections 4.02(b)-(e) have been satisfied.

**ARTICLE V.
AFFIRMATIVE COVENANTS**

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent and each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable (other than indemnity claims for which no claim has been made) under any Loan Document shall have been indefeasibly paid in full in cash, unless the Required Lenders shall otherwise consent in writing, each Loan Party will, and will cause each of its Subsidiaries to:

Section 5.01. **Financial Statements, Reports, etc.**

(a) Furnish to the Administrative Agent on behalf of the Lenders:

(i) **Monthly Financials.** Within thirty (30) days after the end of the first two months of each Fiscal Quarter, financial information regarding the Borrower and its Subsidiaries, certified by a Financial Officer of the Borrower, consisting of consolidated (i) unaudited balance sheets as of the close of such month and the related statements of income and cash flows for that portion of the Fiscal Year ending as of the close of such month and (ii) unaudited statements of income and cash flows for such month, setting forth in comparative form the figures for the corresponding period in the prior year, all prepared in accordance with GAAP (subject to normal quarter-end or year-end adjustments) it being understood that such financial statements shall not have asset impairments as required by GAAP;

(ii) **Quarterly Financials.** Within forty-five (45) days after the end of the first three Fiscal Quarters of each Fiscal Year, consolidated and consolidating financial information regarding the Borrower and its Subsidiaries, certified by a Financial Officer of the Borrower, consisting of (i) an unaudited consolidated balance sheet as of the close of such Fiscal Quarter and the related statements of income and cash flow for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, and (ii) an unaudited consolidated statements of income and cash flows for such Fiscal Quarter, in each case setting forth in comparative form the figures for the corresponding period in the prior year, all prepared in accordance with GAAP (subject to normal year-end adjustments) it being understood that such financial statements shall not have asset impairments as required by GAAP. In addition, the Borrower shall deliver to Administrative Agent and Lenders, within forty-five (45) days after the end of each Fiscal Quarter, a management discussion and analysis for the Borrower and its Subsidiaries on a consolidated basis that includes a comparison of performance for that Fiscal Quarter to the corresponding period in the prior year;

(iii) **Management Letters.** Within forty-five (45) Business Days after receipt thereof by the Borrower, copies of all management letters, exception reports or similar letters or reports received by the Borrower from its independent registered public accountants;

(iv) **SEC Filings and Press Releases.** Promptly upon their becoming available, and at a minimum on a quarterly basis, copies of: (i) any Financial Statements, reports, notices and proxy statements made publicly available by the Borrower; (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by any Borrower with any securities exchange or with the Commission or any governmental or private regulatory

authority; and (iii) all press releases and other statements made available by the Borrower to the public concerning material changes or developments in the business of any such Person.

(v) Documents Filed with Bankruptcy Court. To the Administrative Agent and the Lenders, copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Debtors with the Bankruptcy Court or the U.S. Trustee in any Case that are not otherwise made publicly available by filings on the Electronic Case Filing System for such Case (the “**Court Documents**”); provided, however, that any such Court Documents filed under seal and/or subject to confidentiality and other restrictions prohibiting disclosure to the Administrative Agent shall not be provided to Administrative Agent.

(vi) Documents Provided to Committees. Copies of any reports filed in any Chapter 11 Case and provided to any creditors’ or other committee or the U.S. Trustee (“**Committee Documents**”) that are not otherwise made publicly available by filings on the Electronic Case Filing System for such Chapter 11 Case; provided, however, that any such Committee Documents filed under seal and/or subject to confidentiality and other restrictions prohibiting disclosure to the Administrative Agent shall not be provided to Administrative Agent.

Documents required to be delivered pursuant to paragraphs (ii) or (iv) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Borrower gives notice to the Administrative Agent, who shall then promptly notify the Lenders, that such documents have been posted to the Borrowers’ Internet site on the Internet at www.flyglobalnow.com, at www.sec.gov/edaux/searches.html or at another website identified in such notice and accessible to the Lenders without charge; provided that the Borrower shall deliver paper copies of such documents to any Lender that requests the Borrowers to deliver such paper copies.

(b) Promptly following any request therefor, the Borrower shall furnish to the Administrative Agent on behalf of the Lenders, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary thereof as any Lender may from time to time reasonably request.

(c) (i) Promptly after any delivery of financial statements under Section 5.01(a)(i) above and (ii) upon the reasonable request of any Lender provided with reasonable prior written notice to the Borrower, members of the Borrower’s senior management (including, without limitation, its chief financial officer or controller) shall conduct and attend a conference call with the Administrative Agent and each Lender who elects to participate to provide, among other things, an update on the Borrower’s financial position, business trends and the Chapter 11 Cases. Access to such conference calls may be password-protected so long as the Borrower takes reasonable steps to provide the Lenders who have elected to participate with access to such calls.

Section 5.02. **Compliance Certificate.**

(a) Concurrently with any delivery of financial statements under Section 5.01(a)(i) above, the Borrower shall deliver to the Administrative Agent a Compliance Certificate (x) certifying that (A) any information presented is true, correct and complete in all material respects and no Default or Event of Default has occurred or, if such a Default or an Event of Default has occurred, specifying in reasonable detail the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (B) such financial information presents fairly in all material respects in accordance

with GAAP (subject to normal year-end adjustments) the financial position, results of operations and statements of cash flows of the Borrower and its Subsidiaries, on a consolidated basis as at the end of such month and for that portion of the Fiscal Year then ended and (y) setting forth computations demonstrating compliance with the covenants contained in Section 6.10, as follows: (A) with respect to Section 6.10(a), a Consolidated EBITDA report on the date that is no later than 30 days after the end of each month, (B) with respect to Section 6.10(b), a minimum Liquidity report by 5:00 pm New York City time on the third Business Day following the end of each calendar week and (C) with respect to Section 6.10(c), a maximum Capital Expenditures report.

(b) So long as any of the Loans are outstanding, the Borrower shall deliver to the Administrative Agent, as promptly as practicable (and in any event, not later than five (5) Business Days) upon any Officer becoming aware of any Default or Event of Default hereunder, an Officer's Certificate specifying such Default or Event of Default and what action the Borrower is taking or propose to take with respect thereto.

Section 5.03. **Changes in Accounting Periods.** Cause (i) each of the Borrower's fiscal years to end on December 31 of each calendar year and (ii) each of its Fiscal Quarters to end on March 31, June 30, September 30 and December 31 of each calendar year; *provided, however*, that the Borrower shall have the right to change its fiscal year or fiscal quarter ends from those dates set forth above so long as any such change is not adverse to the Lenders and, prior to any such change becoming effective, the Borrower shall have made such modifications to the provisions of Section 6.10 in connection therewith as may be necessary to preserve the intent of the provisions of Section 6.10 and as are reasonably satisfactory to the Administrative Agent and the Required Lenders.

Section 5.04. **Litigation and Other Notices.** Furnish to the Administrative Agent and each Lender written notice of the following promptly (and, in any event, within five Business Days after any Responsible Officer of any Loan Party obtains knowledge thereof):

(i) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Company or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(ii) the existence of any Default, Event of Default or other event or any development that has resulted in, or could reasonably be expected to result in a Material Adverse Effect;

(iii) the occurrence of a Casualty Event with respect to property having a value individually or in the aggregate in excess of \$500,000; and

(iv) (i) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral or (ii) the occurrence of any other event which could materially affect the value of the Collateral.

Section 5.05. **Corporate Existence.** Subject to Section 6.13, do or cause to be done all things reasonably necessary to preserve and keep in full force and effect (a) the corporate existence of the Borrower, and the corporate, partnership or other existence of the Borrower's Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the

Borrower or any such Subsidiary and (b) the material rights (charter and statutory), licenses and franchises of the Borrower and its Subsidiaries; *provided* that the Borrower shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the loss thereof would not have a Material Adverse Effect.

Section 5.06. **Insurance.**

(a) **Generally.** Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including insurance with respect to properties material to the business of the Companies against such casualties and contingencies and of such types and in such amounts with such deductibles as is customary in the case of similar businesses operating in the same or similar locations.

(b) **Requirements of Insurance.** All such insurance shall (i) (if commercially generally available at usual and customary rates) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof, (ii) name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, except in the case of leased premises and equipment to the extent the lessor is the loss payee and additional insured and (iii) if reasonably requested by the Collateral Agent, include a breach of warranty clause.

(c) **Notice to Agents.** Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.06 is taken out by any Company; and, upon request, promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(d) **Broker's Report.** Deliver to the Administrative Agent and the Collateral Agent and the Lenders a report of a reputable insurance broker with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request.

Section 5.07. **Taxes.** Pay its material Tax obligations promptly and in accordance with their terms and pay and discharge promptly when due all material Post-Petition Taxes imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof, in each case, so long as the payment of any such Tax is permitted or required under the Bankruptcy Code or order of the Bankruptcy Court; *provided* that such payment and discharge shall not be required with respect to any such Tax, so long as (x) (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, (ii) such contest operates to suspend collection of the contested Tax and enforcement of a Lien other than a Permitted Lien and (iii) in the case of Collateral, the applicable Company shall have otherwise complied with the Contested Collateral Lien Conditions or (y) the failure to pay could not reasonably be expected to result in a Material Adverse Effect.

Section 5.08. **Employee Benefits.** (a) Comply in all material respects with, with respect to each Multiemployer Plan, the applicable provisions of ERISA and the Code and other applicable laws and (b) furnish to the Administrative Agent (a) as soon as possible after, and in any event within 5 days after any Responsible Officer of any Company knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event, could reasonably be expected to result in a liability of the Companies in an aggregate amount exceeding \$1,000,000 or the imposition of a Lien, a statement of a Financial Officer of the Borrower setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (b) upon request by the Administrative Agent, copies of (i) all notices received by any Company or, to the extent reasonably available to a Financial Officer of the Borrower, any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event and (ii) any documents described in Section 101(k) of ERISA that any Company may request with respect to any Multiemployer Plan (provided that if the applicable Company has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, such Company shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents or notices promptly after receipt thereof).

Section 5.09. **Maintenance of Property; Access to Properties.** Keep proper books of record and account in which full, true and correct, in all material respects, entries in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Each Company will permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the property of such Company at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent to discuss the affairs, finances, accounts and condition of any Company with the officers and employees thereof and advisors therefor (including independent accountants).

Section 5.10. **Use of Proceeds.** Use the proceeds of the Loans only for the purposes set forth in Section 3.21.

Section 5.11. **Compliance with Environmental Laws; Environmental Reports.** Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, comply, and cause all lessees and other Persons occupying Real Property owned, operated or leased by any Company to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and Real Property, which compliance shall include obtaining and renewing all material Environmental Permits applicable to its operations and Real Property; and conduct all Responses required by, and in accordance with, Environmental Laws; *provided* that no Company shall be required to undertake any Response to the extent that its obligation to do so is being reasonably contested in good faith and by proper proceedings and appropriate reserves are being maintained by the Company with respect to such circumstances in accordance with GAAP, and shall undertake reasonable efforts to identify and evaluate issues of compliance with and liability under Environmental Laws prior to acquiring, directly or indirectly, any ownership or leasehold interest in any real property, or other interest in any property, that could give rise to any material liability under any Environmental Law on the part of any Company.

Section 5.12. **Security Interests, Further Assurances; Additional Guarantors.** (a) Promptly, with respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to the Lien created by any of the Security Documents or Orders but is not so subject, or upon the reasonable request of the Administrative Agent at the direction of the Required Lenders, the Collateral Agent or any Lender, at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or

recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by the Administrative Agent at the direction of the Required Lenders or the Collateral Agent reasonably necessary or desirable (i) to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Liens, and take all actions reasonably necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable Requirements of Law, with respect to any property acquired after the Closing Date that is intended to be subject to the Lien created by the Security Documents or Orders or (ii) for the continued validity, perfection and priority of the Liens on the Collateral covered thereby or by the Interim Order (or, as applicable, the Final Order), subject to no other Liens except as permitted hereby or by the applicable Security Document or use commercially reasonable efforts to obtain any consents or waivers as may be necessary or appropriate in connection therewith. In addition, Borrower shall deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders and the Collateral Agent as the Administrative Agent at the direction of the Required Lenders and the Collateral Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents and the Orders. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, execute and deliver all applications, certifications, instruments and other documents and papers that the Administrative Agent, the Collateral Agent or such Lender may reasonably require.

(b) With respect to any person that is or becomes a Subsidiary after the Closing Date, promptly (and in any event within 30 days after such person becomes a Subsidiary) (i) deliver to the Collateral Agent the certificates, if any, representing all of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Loan Party and (ii) cause such new Subsidiary (A) to execute a Joinder Agreement or such comparable documentation to become a Subsidiary Guarantor and a joinder agreement to the applicable Security Agreement, substantially in the form annexed thereto or, in the case of a Foreign Subsidiary to the extent reasonably requested by Administrative Agent at the direction of the Required Lenders, execute a security agreement compatible with the laws of such Foreign Subsidiary's jurisdiction in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders, and (B) to take all actions reasonably necessary or advisable in the reasonable opinion of the Administrative Agent at the direction of the Required Lenders or the Collateral Agent to cause the Lien created by the Orders and the applicable Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent at the direction of the Required Lenders or the Collateral Agent. Notwithstanding the foregoing, (1) the property and the Equity Interests required to be delivered to the Collateral Agent pursuant to Section 5.12(a) and clause (i) of this Section 5.12(b), respectively, in each case, shall not include any Equity Interests of a Foreign Subsidiary that is a CFC created or acquired after the Closing Date or intercompany notes owing from a Foreign Subsidiary that is a CFC to any Loan Party that are secured by any assets of such Foreign Subsidiary and (2) no Foreign Subsidiary that is a CFC shall be required to take or continue to be subject to the actions specified in clause (ii) of this Section 5.13(b), if, in the case of either clause (1) or (2), doing so would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the

Code, which investment would or could result in an increase in the net income or reduction in the net losses of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Code as reasonably determined by Borrower; *provided* that this exception shall not apply to (A) Voting Stock of any Subsidiary which is a first-tier Foreign Subsidiary that is a CFC representing up to 66% of the total voting power of all outstanding Voting Stock of such Subsidiary and (B) 100% of the Equity Interests not constituting Voting Stock of any such Subsidiary, except that any such Equity Interests constituting “stock entitled to vote” within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as Voting Stock for purposes of this Section 5.13(b).

Section 5.13. **Compliance with Milestones.** Unless otherwise waived by the Required Lenders in their sole discretion, each Loan Party shall take all actions necessary to achieve the events as set forth below (the “**Milestones**”) by the dates specified therein (or such later date as may be agreed to by the Administrative Agent at the direction of the Required Lenders in their sole discretion):

- (a) entrance into the Final Order approving the this Agreement by March 16, 2012;
- (b) delivery to the Administrative Agent, by April 22, 2012, of a business plan for the Borrower and its Subsidiaries in form and substance satisfactory to the Required Lenders in their sole discretion which shall take into consideration the uncertainty related to the revised collective bargaining agreements referenced in clause (d) below, and among other things, demonstrate the basis on which the Borrower and its Subsidiaries are able to achieve such business plan (“**Initial Milestone**”);
- (c) rationalization of airplane fleet in a manner reasonably satisfactory to the Required Lenders by April 22, 2012;
- (d) (i) execution and delivery of an agreement with the unions on the terms of the revised collective bargaining agreements on terms reasonably satisfactory to the Required Lenders by May 22, 2012 or (ii) to the extent such agreement has not been executed and delivered by May 22, 2012, evidence satisfactory to the Required Lenders that sufficient progress has been made prior to such date by the parties with respect to the finalization of terms of the revised collective bargaining agreements;
- (e) on or prior to June 22, 2012, the Debtors and the Required Lenders shall have mutually agreed on (i) a strategy for the Debtors to conclude their Chapter 11 Cases, whether by sale, plan of reorganization or otherwise and (ii) an additional set of Milestones to implement such strategy;
- (f) delivery to the Administrative Agent, by June 22, 2012, of an updated business plan for the Borrower and its Subsidiaries in form and substance satisfactory to the Required Lenders in their sole discretion which shall, among other things, demonstrate the basis on which the Borrower and its Subsidiaries are able to achieve such updated business plan; and
- (f) after June 22, 2012, Net Government Receivables will be greater than the aggregate amount of \$15.0 million.

Section 5.14. **Cash Management Systems.** As soon as possible but no later than within 45 days following the Closing Date (such period to be extended by the Administrative Agent at the direction of the Required Lenders), each agreement among the Pre-Petition First Lien Trustee, the Pre-Petition Second Lien Agent and the Loan Party party thereto and the financial institution at which the Deposit Account the subject thereof is maintained, or with such entitlement or contract is carried, effective to grant “control” (as defined under the UCC) and entered into in connection with the Pre-Petition Loan

Documents to be amended to include the Obligations and the Collateral Agent in such agreement. No Loan Party shall establish any Deposit Account, Securities Account (as defined in the Security Agreement) or Commodities Account (as defined in the Security Agreement) that is not under the “control” (as defined in the UCC) of the Collateral Agent, unless promptly following the establishment thereof the Collateral Agent shall have a perfected Lien in such Deposit Account or investment account of such Loan Party pursuant to a Control Agreement, excluding payroll accounts, withholding tax accounts and other fiduciary and trust accounts.

Section 5.15. **Maximum Budget Variance.**

(a) Attached hereto as Exhibit J is the Approved Budget as of the Closing Date. Beginning on March 13, 2012 (by 12:00 noon New York City time), and every second Tuesday thereafter (by 12:00 noon New York City time), the Debtors shall deliver an updated thirteen-week cash flow budget (each such updated budget, a “**Supplemental Budget**”). If and only if the Required Lenders approve such Supplemental Budget, with such approval not to be unreasonably withheld where such Supplemental Budget is reasonably consistent with the then-existing Approved Budget (after taking into consideration the Debtors’ actual performance relative to the then-existing Approved Budget and any reasonably expected improvements in such performance), then such Supplemental Budget shall automatically become the Approved Budget. On the Tuesday of each week (by 12:00 noon prevailing Eastern Time), the Borrower shall provide a variance report (a “**Variance Report**”) with respect to the immediately prior week, setting forth (i) the actual cash receipts, expenditures and disbursements for such immediately preceding week on a line-item basis and available cash on hand as of the end of such week, (ii) the variance in dollar amounts of the actual expenditures and disbursements for each weekly period from those reflected for the corresponding period in the Approved Budget and (iii) a description of the nature of any positive or negative variance in excess of 5% in any line-item for each weekly period from what is reflected in the corresponding line-item for the corresponding period in the Approved Budget.

(b) For every one-week period commencing on February 25, 2012, and thereafter, tested by reference to the Variance Report each week, the aggregate expenditures and disbursements by the Loan Parties for each line item in the Approved Budget shall not exceed 15% of the corresponding line-item expenditures budgeted for such time period; *provided, however*, that any budgeted line-item expenditure for such one-week period may be increased by an amount equal to the unused portion of such corresponding budgeted line-item from the immediately preceding week only to the extent that both weeks are the subject of the same Approved Budget then in effect and only during the time period in which such Approved Budget is then in effect.

Section 5.16. **Post-Closing Requirements.**

(a) As soon as commercially reasonable after the Closing Date but no later than within forty-five (45) calendar days after the Closing Date (or such later date agreed to by the Administrative Agent at the direction of the Required Lenders), the Borrower shall ensure that

(i) the Administrative Agent shall have received a certificate as to coverage under the insurance policies required by Section 5.06 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a customary lender’s loss payable endorsement and to name the Collateral Agent as additional insured, in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders;

(ii) the Administrative Agent receives an original executed copy of the Intercompany Note with related allonge;

(iii) the Loan Parties shall have delivered an executed Security Agreement in form and substance reasonably satisfactory to the Administrative Agent and the direction of the Required Lenders; and

(iv) the Administrative Agent and the Collateral Agent shall have received such documentations, consents, authorizations, approvals and orders in form and substances reasonably satisfactory to the Administrative Agent and the Collateral Agent, each as directed by the Required Lenders, shall reasonably deem necessary to perfect or maintain the Liens on any Deposit Accounts, Securities Accounts or Commodities Accounts pursuant to the Security Documents and the Orders.

ARTICLE VI. NEGATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full in cash, unless the Administrative Agent shall otherwise consent in writing at the direction of the Required Lenders, no Loan Party will, nor will they cause or permit any Subsidiaries to:

Section 6.01. **Stay, Extension and Usury Laws**. At any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement; and each of the Borrower and the Guarantors (to the extent that they may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Administrative Agent, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 6.02. **Investments, Loans and Advances**. Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other similar interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted:

(a) Investments outstanding on the Closing Date and identified on Schedule 6.04(b);

(b) the Companies may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business in accordance with the Approved Budget;

(c) Investments (i) by any Company in the Borrower or any Subsidiary Guarantor and (ii) by a Subsidiary that is not a Subsidiary Guarantor in any other Subsidiary that is not a Subsidiary Guarantor;

provided that any Investment in the form of a loan or advance shall be evidenced by the Intercompany Note and, in the case of a loan or advance by a Loan Party, pledged by such Loan Party as Collateral pursuant to the Security Documents;

- (d) Permitted Investments; and
- (e) Investments that are consistent with the Approved Budget.

Section 6.03. **Dividends.** Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, unless such Company is a Loan Party.

Section 6.04. **Indebtedness.** Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

- (a) Indebtedness incurred under this Agreement and the other Loan Documents;
- (b) Indebtedness outstanding on the Petition Date;
- (c) Indebtedness in respect of bid, performance or surety bonds, workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of any Company in the ordinary course of business, including guarantees or obligations of any Company with respect to letters of credit supporting such bid, performance or surety bonds, workers' compensation claims, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed), in an aggregate amount not to exceed \$1.0 million at any time outstanding or to the extent such Indebtedness described in this clause (c) is specifically enumerated in the Approved Budget, incurred in the ordinary course of business and consistent with past practice;
- (d) the incurrence by the Borrower or any of the other Loan Parties of intercompany Indebtedness between or among the Borrower and any of the other Loan Parties; provided, however, that (A) such Indebtedness is expressly subordinated to the prior payment in full in cash of all Loan Obligations, in the case of a Borrower, or, the Loan Guarantee, in the case of a Guarantor, is evidenced by a note or other instrument and is pledged and delivered in accordance with the Security Agreements and (B)(x) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Borrower or another Loan Party and (y) any sale or other transfer of any such Indebtedness to a Person, or the sale or other transfer of a Lien in respect of such Indebtedness, that is not either the Borrower or another Loan Party shall be deemed, in each case, to constitute an incurrence of Indebtedness that was not permitted by this clause (d);
- (e) Contingent Obligations of any Loan Party in respect of Indebtedness otherwise permitted under this Section 6.04;
- (f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within ten Business Days of incurrence, and cash management obligations and other Indebtedness in respect of netting services, overdraft protection and similar arrangements in each case in connection with deposit accounts incurred in the ordinary course of business in connection with cash management activities;

(g) Indebtedness of any Loan Party to credit card processors in connection with credit card processing services incurred in the ordinary course of business;

(h) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business; and

(i) Indebtedness of the Borrower or any of its Subsidiaries which may be deemed to exist in connection with agreements providing for indemnification, purchase price adjustments and similar obligations in connection with acquisitions or sales of assets and/or businesses.

Notwithstanding the foregoing, and except for the Carve-Out or as otherwise provided in Section 2.20 or the Orders, no Indebtedness under Sections 6.04(b) through (n) shall be permitted to have an administrative expense claim or super-priority status under the Bankruptcy Code senior to or *pari passu* with the super-priority administrative expense claims of the Agents and the Lenders (or the adequate protection claims of the Pre-Petition First Lien Trustee and the noteholders party to the Pre-Petition Indenture) as set forth herein and in the Orders.

Section 6.05. **Asset Sales.** Effect any Asset Sale, or agree to effect any Asset Sale, except that the following shall be permitted:

(a) sales of inventory and dispositions of cash and Cash Equivalents, in each case in the ordinary course of business;

(b) trade-ins and exchanges of equipment in the ordinary course of business

(c) any disposition of property that constitutes a Casualty Event

(d) sales, assignments, transfers or dispositions of accounts receivable (without recourse) in the ordinary course of business for purpose of collection;

(e) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents

(f) Asset Sales of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Asset Sales of property no longer used or useful in the conduct of the business of the Borrower and the other Loan Parties;

(g) Asset Sales among the Borrower and the other Loan Parties; and

(h) Investments permitted by Section 6.02, Asset Sales permitted by Section 6.11, and Liens permitted by Section 6.07.

Section 6.06. **Transactions with Affiliates.** Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company (other than between or among the Borrower and one or more Subsidiary Guarantors), other than on terms and conditions at least as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that (a) insurance transactions with Subsidiaries that are not Guarantors to the extent such insurance transaction is in the ordinary course of business and consistent with past practice and (b) Investments permitted by Section 6.02(f) shall be permitted.

Section 6.07. **Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the “**Permitted Liens**”):

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, or where the nonpayment of the obligations secured thereby is permitted by the Bankruptcy Code, and (ii) in the case of any such charge or claim which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(b) any Lien in existence on the Petition Date and set forth on Schedule 6.07(b);

(c) all matters shown on any Title Policies and all easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at such Real Property;

(d) Liens arising out of judgments, attachments or awards not resulting in a Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings or where nonpayment of the obligations secured thereby is permitted by the Bankruptcy Code and, in the case of any such Lien which has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(e) Liens (other than any Lien imposed by ERISA) (x) imposed by Requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that (i) with respect to clauses (x), (y) and (z) of this paragraph (f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings for orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property subject to any such Lien or where nonpayment of the obligations secured thereby is permitted by the Bankruptcy Code, (ii) to the extent such Liens are not imposed by Requirements of Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents and (iii) in the case of any such Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(f) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness; *provided* that any such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by the Security Documents and the Orders, except if and only to the extent that the Requirement of Law creating, permitting or authorizing such Lien requires that such Lien is or must be superior to the Lien and security interest created and evidenced by the Security Documents and the Orders; and

(g) Liens granted pursuant to the Security Documents and the Orders to secure the Secured Obligations.

Section 6.08. **Sale and Leaseback Transactions.** Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Leaseback Transaction**").

Section 6.09. **Acquisitions.** Purchase or otherwise acquire (in one or a series of related transactions) any part of the property (whether tangible or intangible) of any Person (or agree to do any of the foregoing at any future time), except that purchases and other acquisitions of inventory, materials, equipment, intangible property and other property in the ordinary course of business and licenses of Intellectual Property in the ordinary course of business; *provided* that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents and the Orders shall be maintained or created in accordance with the provisions of Section 5.13 or Section 5.15, as applicable.

Section 6.10. **Financial Covenants.**

(a) **Minimum Consolidated EBITDA.** Permit Consolidated EBITDA for each calendar month ending on the dates set forth below, to be, in each such case, less than the amount set forth opposite each such date in the table below:

<u>Month Ending</u>	<u>Minimum Consolidated EBITDA</u>
[February 29, 2012]	\$_[_____]
[March 31, 2012]	\$_[_____]
[April 30, 2012]	\$_[_____]
[May 31, 2012]	\$_[_____]
[June 30, 2012]	\$_[_____]

<u>Month Ending</u>	<u>Minimum Consolidated EBITDA</u>
[July 31, 2012]	\$[_____]
[August 31, 2012]	\$[_____]

(b) **Minimum Liquidity.** As of the third Business Day following the end of each calendar week (it being understood that “calendar week” shall begin on each Monday and end on the following Sunday) during the period beginning on the Petition Date and ending on the Final Maturity Date, permit the average Liquidity to be less than \$10.0 million.

(c) **Limitation on Capital Expenditures.** Permit the aggregate amount of Capital Expenditures each calendar month ending on the dates set forth below, to exceed the amount set forth opposite such period below:

<u>Month Ending</u>	<u>Amount (in millions)</u>
[February 29, 2012]	\$[_____]
[March 31, 2012]	\$[_____]
[April 30, 2012]	\$[_____]
[May 31, 2012]	\$[_____]
[June 30, 2012]	\$[_____]
[July 31, 2012]	\$[_____]
[August 31, 2012]	\$[_____]

Section 6.11. **Mergers and Consolidations.** Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time); except that (a) any Subsidiary that is not a Guarantor may merge or consolidate with or into any other Subsidiary that is not a Guarantor, (b) any Guarantor may merge into any other Guarantor (c) any Subsidiary with no material assets may liquidate or dissolve.

Section 6.12. **Payments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, etc.** Directly or indirectly:

(i) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding except as otherwise permitted by this Agreement or the First Day Order;

(ii) make any payments or transfer, or agree to any setoff or recoupment, with respect to any Pre-Petition claim, Pre-Petition Lien or Pre-Petition Indebtedness of any Loan

Parties, except (x) to the extent authorized by any First Day Order or the Orders, or (y) as otherwise permitted by applicable law or order of the Bankruptcy Court;

(iii) amend or modify, or permit the amendment or modification of, any provision of any Loan Document, the Orders or the First Day Orders without the consent of the Administrative Agent at the direction of the Required Lenders; or

(iv) incur, create, assume, suffer to exist or permit any super-priority administrative claim which is *pari passu* with or senior to the super-priority claims under the Loan Documents, except as set forth in this Agreement or the other Loan Documents, the Orders or the First Day Order.

Section 6.13. **Business.** Engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Subsidiaries are engaged on the Closing Date and businesses reasonably related or ancillary thereto.

Section 6.14. **Limitation on Accounting Changes.** Make or permit any material change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that are permitted under GAAP.

Section 6.15. **No Further Negative Pledge.** Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (1) this Agreement and the other Loan Documents; (2) covenants in documents creating Liens permitted by Section 6.07 prohibiting further Liens on the properties encumbered thereby; (3) the Pre-Petition Loan Documents; (4) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the Secured Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Loan Party to secure the Secured Obligations; and (5) any prohibition or limitation that (a) exists on the Closing Date, (b) exists pursuant to applicable Requirements of Law, (c) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.05 pending the consummation of such sale, (d) restricts subletting or assignment of any lease governing a leasehold interest of the Borrower or a Subsidiary, (e) exists in any agreement in effect at the time such Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary, or (f) is imposed by any amendments or refinancings that are otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clause (3) or (5)(e); *provided* that such amendments and refinancings are no more materially restrictive with respect to such prohibitions and limitations than those prior to such amendment or refinancing.

Section 6.16. **Anti-Terrorism Law; Anti-Money Laundering.**

(a) Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person such that the Borrower would be unable to make the representation set forth in Section 3.22, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked in violation of the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or

attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Loan Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Loan Parties' material compliance with this Section 6.16 unless such action is taken at the direction of a Governmental Authority).

(b) Cause or permit any of the funds of such Loan Party that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be a material violation of any Requirement of Law.

Section 6.17. **Embargoed Person.** Knowingly cause or permit (a) any of the funds or properties of the Loan Parties that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**") (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Loan Parties, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by a Requirement of Law or the Loans materially violate a Requirement of Law, including, without limitation, the provisions of 31 C.F.R. Chapter V or any legal restriction, including legislation, Executive order, or regulation, administered by OFAC.

Section 6.18. **Chapter 11 Claims.** Except as otherwise allowed pursuant to the Orders, incur, create, assume, suffer to exist or permit any Lien or other super-priority administrative claim which is *pari passu* with or senior to the Liens or claims of the Agents and the Lenders against the Loan Parties, or the adequate protection Liens or claims of the Pre-Petition First Lien Trustee and the holders of the Pre-Petition Senior Secured Notes against the Loan Parties, in each case, subject to the Carve-Out.

Section 6.19. **Certain Payments on Account of Pre-Petition Claims.** The Loan Parties shall not make (i) any payments on account of any creditor's pre-petition unsecured claims, (ii) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, or (iii) payments under any management incentive plan or on account of claims or expenses arising under Section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (a) are approved by order of the Bankruptcy Court and (b) are in accordance with any Approved Budget satisfactory to the Required Lenders.

Section 6.20. **Pre-Petition Indebtedness.** The Loan Parties shall not make any adequate protection payments on account of any Pre-Petition Indebtedness, except as set forth herein or in the Interim Order (or, as applicable, the Final Order) in respect of the Obligations (as defined in the Pre-Petition Indenture) or in any other order of the Bankruptcy Court that is consented to by the Required Lenders.

ARTICLE VII. LOAN GUARANTEE

Section 7.01. **The Guarantee.** (a) Subject to this Article VII, the Guarantors hereby, jointly and severally, unconditionally guarantee to each Secured Party and its successors and assigns, irrespective of the validity and enforceability of this Agreement, the Loans, the Security Documents, the other Loan Documents, or the Loan Obligations of the Borrower hereunder or thereunder, that: (i) the principal of, interest and premium on the Loans shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Loans, if any, if lawful, and all other Loan Obligations hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of repayment of any Loans or any of such other Loan Obligations, that same shall be promptly paid in full

when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Loans, this Agreement, the Security Documents or the other Loan Documents, the absence of any action to enforce the same, any waiver or consent by any Secured Party with respect to any provisions hereof or thereof, the recovery of any judgment against the Borrower, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. To the fullest extent permitted by applicable law, each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Borrower, any right to require a proceeding first against the Borrower, protest, notice and all demands whatsoever and covenants that this Loan Guarantee shall not be discharged except by payment in full of the Loan Obligations or unless permitted by Section 6.05.

(c) Each Guarantor jointly and severally agrees to pay any and all reasonable and invoiced out-of-pocket costs and expenses (including reasonable and invoiced attorneys' fees, disbursements and other charges of one counsel to the Lenders and one counsel to the Administrative Agent (and, if necessary, of one local counsel in each relevant jurisdiction and regulatory counsel) and consultants) incurred by the Administrative Agent or any other Secured Party in connection with the enforcement of, or preservation of rights under, the Loans Documents (including under this Section 7.01).

(d) If the Administrative Agent or any other Secured Party is required by any court or otherwise to return to the Borrower, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Borrower or the Guarantors, any amount paid either to the Administrative Agent or any other Secured Party, this Loan Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor agrees that it shall not be entitled to exercise any right of subrogation in relation to the Secured Parties in respect of any obligations guaranteed hereby until payment in full of all Loan Obligations guaranteed hereby or until such Guarantor's Loan Guarantee is released pursuant to Section 6.05. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Secured Parties, on the other hand, (x) the maturity of the Loan Obligations guaranteed hereby may be accelerated as provided in Article VIII for the purposes of this Loan Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Loan Obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such Loan Obligations as provided in Article VIII, such Loan Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Loan Guarantee. The Guarantors shall have the right to seek contribution from any Guarantor that has not paid its proportionate share of any payment made hereunder, so long as the exercise of such right does not impair the rights of the Secured Parties under this Loan Guarantee.

(f) Each Loan Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Borrower for liquidation, reorganization, should the Borrower become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Borrower's assets, and shall, to the fullest

extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Loans are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Loans or the Loan Guarantees, whether as a “voidable preference,” “fraudulent transfer” or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Loans shall, to the fullest extent permitted by applicable law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of this Loan Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) The Loan Guarantee issued by any Guarantor shall be (i) a senior secured obligation of such Guarantor and (ii) senior in right of payment to all existing and future subordinated Indebtedness of such Guarantor.

(i) Each payment to be made by a Guarantor in respect of its Loan Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 7.02. **The Loan Guarantee.** Each Guarantor, and by its making of the Loans, each Lender, hereby confirms that it is the intention of all such parties that the Loan Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Loan Guarantee. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article VII, result in the obligations of such Guarantor under its Loan Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Loan Guarantee shall be entitled upon payment in full of all guaranteed Loan Obligations to a contribution from each other Guarantor in an amount equal to such other Guarantor’s pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 7.03. **Execution and Additional Guarantors.** If required by Section 5.13, the Borrower shall cause any newly created or acquired Subsidiary to comply with the provisions of Section 5.13 and this Article VII, to the extent applicable.

Section 7.04. **Subrogation.** Each Guarantor shall be subrogated to all rights of the Secured Parties against the Borrower in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 7.01; *provided that*, if a Default or an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Borrower under this Agreement and the other Loan Documents shall have been paid in full.

Section 7.05. **Benefits Acknowledged.** Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Agreement and that the

guarantee and waivers made by it pursuant to its Loan Guarantee are knowingly made in contemplation of such benefits.

ARTICLE VIII. EVENTS OF DEFAULT

Section 8.01. **Events of Default.** Upon the occurrence and during the continuance of any of the following events (each, an “**Event of Default**”):

(a) default shall be made in the payment of any principal of or premium, if any, on any Loan when and as the same shall become due and payable at its Final Maturity Date, upon optional prepayment, upon a required repayment or offer to repay (including a default in payment resulting from the failure to make a required offer to repay), upon acceleration or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in clause (a) above) due under any Loan Document, when and as the same shall become due and payable, whether at the due date thereof (including an Interest Payment Date) or at a date fixed for prepayment (whether voluntary or mandatory) or by acceleration or demand thereof or otherwise;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings of Loans hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) the Loan Parties fail to provide a Supplemental Budget that becomes an Approved Budget in accordance with the procedures set forth in Section 5.15 within three (3) Business Days of delivery of a Supplemental Budget;

(e) default shall be made in the due observance or performance by the Borrower or any of its Subsidiaries of any covenant or agreement contained in Section 5.02(b), 5.14, 5.16 or Article VI;

(f) default shall be made in the due observance or performance by the Borrower or any of its Subsidiaries of any covenant or agreement contained in the Agreement other than those mentioned in clause (e) above, which default continues for a period of 30 days after any Loan Party receives written notice specifying the default (and demanding that such default be remedied and stating that such notice is a “Notice of Default”) from the Administrative Agent or the Required Lenders;

(g) except as permitted by this Agreement, any Loan Guarantee shall be held in any judicial proceeding to be unenforceable or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligation under its Loan Guarantee;

(h) one or more ERISA Events shall have occurred that, when taken together with all other such ERISA Events that have occurred, could reasonably be expected to result in liability of any Company and its ERISA Affiliates in an aggregate amount exceeding \$250,000;

(i) any security interest and Lien purported to be created by any Security Document or the Orders shall cease to be in full force and effect other than in accordance with the terms of such Collateral Agreement or this Agreement, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Document or Order (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in such Security Document, this Agreement or any other Loan Document or Order)) in favor of the Collateral Agent, or shall be asserted by Borrower or any other Loan Party not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement, such Security Document, any other Loan Document or the applicable Order) security interest in or Lien on the Collateral covered thereby;

(j) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny any portion of its liability or obligation for the Obligations; or

(k) The Chapter 11 Cases.

(i) the bringing of a motion by any Loan Party, or the entry of an order, pleading or ruling (which has not been withdrawn, dismissed or reversed): (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code which is not otherwise permitted pursuant to this Agreement (unless such financing is proposed to refinance and pay in full in cash the Secured Obligations and the Pre-Petition First Lien Obligations with, in each case, the termination of all related lending commitments thereunder); (B) to grant any Lien other than Permitted Liens upon or affecting any Cash Collateral without the prior written consent of the Administrative Agent and the Required Lenders; (C) except as provided in the Orders, to use Cash Collateral of the Agents or the Pre-Petition First Lien Trustee under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent and the Required Lenders; or (D) to take any other action or actions adverse to the Agents, Lenders, Pre-Petition First Lien Trustee or noteholders party to the Pre-Petition Indenture or their respective interests in the Collateral or their respective rights and remedies under the Loan Documents or the Pre-Petition Note Documents;

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Loan Party that does not provide for the repayment of cash in full of the Obligations and the Roll-Up Notes pursuant to the Final Order;

(iii) prior to the entry of the Final Order, the Interim Order shall (a) no longer be in full force and effect or (b) be reversed, vacated, stayed, amended, supplemented or otherwise modified, in each case without the consent of the Administrative Agent and the Required Lenders;

(iv) the entry of an order in the Chapter 11 Cases amending, supplementing, staying, vacating, reversing or otherwise modifying the Final Order in a manner adverse to the Lenders without the written consent of the Administrative Agent and the Required Lenders;

(v) the Final Order is entered by the Bankruptcy Court on or before the entry of the Interim Order;

(vi) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents without the written consent of the Administrative Agent and the Required Lenders;

(vii) the entry of an order appointing an interim or permanent trustee, a receiver or an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of such Loan Party (or any Loan Party seeks or acquiesces in such relief);

(viii) any Loan Party files a motion or does not oppose a motion filed by any party in interest seeking, or an order that is entered and permitting, the sale, without the Administrative Agent's and the Required Lenders' consent, of all or substantially all of the assets of the Loan Parties pursuant to Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Case, or otherwise that does not provide for payment in full in cash of the Secured Obligations and termination of Lenders' Commitment;

(ix) the dismissal of the Chapter 11 Cases, or the conversion of the Chapter 11 Cases from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code (except as consented to by the Administrative Agent and the Required Lenders) or any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code, conversion of the Chapter 11 Cases or otherwise;

(x) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor to execute upon or enforce a Lien on any Collateral having a value in excess of \$500,000;

(xi) other than the Carve-Out and except as otherwise provided by the Orders or this Agreement, the entry of an order in the Chapter 11 Cases granting any other super-priority administrative claim or Lien equal or superior to that granted to Administrative Agent, on behalf of itself and/or the Secured Parties pursuant to this Agreement, the Security Documents and the Orders;

(xii) termination of the exclusive period for the Loan Parties to file a plan of reorganization in the Chapter 11 Cases;

(xiii) the entry of any order, other than the Orders, by the Bankruptcy Court invalidating, subordinating, disallowing, recharacterizing or limiting in any respect, as applicable, the enforceability, priority, characterization or validity of any of the Liens securing the First Lien Debt;

(xiv) any Collateral becoming subject to surcharge or marshalling; or

(xv) subject to the Final Order, the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Agent any Lender or any of the Collateral or against any Pre-Petition First Lien Trustee, any holders of Pre-Petition Senior Secured Notes or any Collateral (as defined in the Pre-Petition Indenture);

then, and in every such event (other than an event with respect to a Foreign Subsidiary described in paragraph (h) or (i) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, by notice to Borrower and subject to the terms of the Orders, take any of the following actions, at the same or different times: (i) terminate forthwith the Commitment; (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding and in any event, with respect to a Foreign Subsidiary described in paragraph (h) or (i) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other Obligations of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; (iii) enter onto the premises of any Loan Party in connection with an orderly liquidation of the Collateral; or (iv) exercise any rights and remedies provided to such Agent under this Agreement, the other Loan Documents, the Orders or applicable law, including all remedies provided under the Bankruptcy Code and, pursuant to the Interim Order and the Final Order, the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit the Agents and Lenders to exercise their remedies under this Agreement, the Loan Documents and the Orders without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court.

Section 8.02. **Application of Payments and Proceeds Following an Event of Default.** If an Event of Default shall have occurred and be continuing, all payments and prepayments made hereunder (including, without limitation, proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies or otherwise) shall be applied *first*, to fees and reimbursable expenses of the Agents then due and payable pursuant to the Loan Documents; *second* to interest and other fees payable hereunder on a *pro rata* basis; *third*, to the principal balance of Loans outstanding hereunder until the same shall have been repaid in cash in full; *fourth*, to reduce on a *pro rata* basis any remaining Commitments; *fifth* to repay any other outstanding Obligations in full; *sixth*, to interest then due and payable on the Roll-Up Notes; *seventh*, to repay the Roll-Up Notes until paid in full; *eighth*, to interest on the Pre-Petition Senior Secured Notes other than Roll-Up Notes; *ninth*, to repay the Pre-Petition Senior Secured Notes other than Roll-Up Notes; *tenth*, to all other amounts owing in respect of the Pre-Petition Senior Secured Notes and the Pre-Petition Indenture; and *eleventh*, as the Bankruptcy Court shall direct; *provided* that clauses six through ten set forth in this provision shall be subject to the terms of the Final Order. In the event that any such proceeds are insufficient to pay in full the items described in this Section 8.02, the Loan Parties shall remain liable, jointly and severally, for any deficiency.

ARTICLE IX. THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 9.01. **Appointment.** (a) Each Lender hereby irrevocably designates and appoints each of the Administrative Agent and the Collateral Agent as an agent of such Lender under this Agreement and the other Loan Documents. Each Lender irrevocably authorizes each Agent, in such capacity, through its agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are

delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Agents and the Lenders, and no Loan Party shall have rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, each Lender hereby authorizes the Administrative Agent to consent, on behalf of each Lender, to the Interim Order and the Final Order.

(b) Each Lender irrevocably appoints each other Lender as its agent and bailee for the purpose of perfecting Liens (whether pursuant to Section 8-301(a)(2) of the UCC or otherwise), for the benefit of the Secured Parties, in assets in which, in accordance with the UCC or any other applicable law a security interest can be perfected by possession or control. Should any Lender (other than the Collateral Agent) obtain possession or control of any such Collateral, such Lender shall notify the Collateral Agent thereof, and, promptly following the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

Section 9.02. **Agent in Its Individual Capacity.** Each Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such Person and its Affiliates may accept deposits from, lend money to, act as financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Company or Affiliate thereof as if it were not an Agent hereunder and without duty to account therefor to the Lenders.

Section 9.03. **Exculpatory Provisions.** No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) whenever reference is made in this Agreement to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Administrative Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Administrative Agent, it is understood that in all cases the Administrative Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02) (acting in accordance with the Credit Agreement and other Loan Documents), as it deems appropriate (it being understood that this provision is intended solely for the benefit of the Administrative Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto); *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose or shall be liable for the failure to disclose, any information relating to any Company or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as any Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02). No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any

Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 9.04. **Reliance by Agent.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent, or otherwise authenticated by a proper Person. Each Agent also may rely upon any statement made to it orally and believed by it to be made by a proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless each Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or advisors.

Section 9.05. **Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of the preceding paragraphs and the indemnification provisions contained herein shall apply to any such sub-agent and to the Affiliates of each Agent and any such sub-agent, and shall apply, without limiting the foregoing, to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Section 9.06. **Successor Agent.** The Agent may resign in its capacity as Administrative Agent and/or Collateral Agent as such at any time upon at least 30 days' prior notice to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Agent from among the Lenders. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, and in consultation with the Borrower, appoint a successor Agent, which successor shall be a commercial lending or other financial institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least \$[500,000,000]; *provided* that if such retiring Agent is unable to find a commercial banking institution that is willing to accept such appointment and which meets the qualifications set forth above, the retiring Agent's resignation shall nevertheless thereupon become effective and the retiring (or retired) Agent shall be discharged from its duties and obligations under the Loan Documents, and the Lenders shall assume and perform all of the duties of such Agent under the Loan Documents until such time, if any, as the Required Lenders appoint a successor Agent.

Upon the acceptance of its appointment as an Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring (or retired) Agent shall be discharged from its duties and obligations under the Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article IX, Section 10.03 and Sections 10.08 to 10.10 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Section 9.07. **Non-Reliance on Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has reviewed each document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

Section 9.08. **Indemnification.** The Lenders severally agree to indemnify each Agent in its capacity as such and each of its Related Persons (to the extent not reimbursed by the Borrower or the Guarantors and without limiting the obligation of the Borrower or the Guarantors to do so), ratably according to their respective outstanding Loans and Commitments in effect on the date on which indemnification is sought under this Section 9.08 (or, if indemnification is sought after the date upon which all Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding Loans and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, fines, penalties, actions, claims, suits, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent or Related Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein, the transactions contemplated hereby or thereby or any action taken or omitted by such Agent or Related Person under or in connection with any of the foregoing (**IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT OR RELATED PERSON**); *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, claims, suits, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements that are found by a final and nonappealable judgment of a court of competent jurisdiction to have directly resulted primarily from such Agent's or Related Person's, as the case may be, gross negligence or willful misconduct. The agreements in this Section 9.08 shall survive the payment of the Loans and all other amounts payable hereunder.

Section 9.09. **Actions in Concert.** Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Notes (including exercising any rights of setoff), if any, without first obtaining the prior written consent of the Agents and the Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and

the Notes, if any, shall be taken in concert and at the direction or with the consent of the Agents or the Required Lenders and as provided in Section 9.01.

Section 9.10. **Enforcement.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent or the Collateral Agent upon the instruction of the Administrative Agent, or as the Required Lenders may be permitted to direct the Administrative Agent, for the benefit of all the Lenders; *provided, however*, that neither Section 10.09 nor Section 10.10 shall prohibit (a) the Agents from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or insolvency law.

Section 9.11. **Withholding.** To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any withholding tax applicable to such payment. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any other reason, or the Administrative Agent has paid over to the Internal Revenue Service applicable withholding tax relating to a payment to a Lender but no deduction has been made from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with any and all expenses incurred, unless such amounts have been indemnified by any Loan Party or the relevant Lender.

**ARTICLE X.
MISCELLANEOUS**

Section 10.01. **Notices.**

(a) **Generally.** Notices and other communications provided for herein shall, except as provided in Section 10.01(b), be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- (i) if to any Loan Party, to the Borrower at:

Global Aviation Holdings Inc.
101 World Drive
Peachtree City, GA 30269-6965
Attention: [_____]]
Telecopy No.: (770) 632-8048
With a copy to: [_____]]
Telecopy No.: (770) 632-8058;

and a copy (which shall not constitute notice) to:

Jonathan S. Henes, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue

New York, NY 10022
Direct: +1-212-446-4927
Fax: +1-212-446-6460
Jonathan.Henes@Kirkland.com

and

Jason Kanner
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Direct: +1-212-446-4902
Fax: +1-212-446-6460
Jason.Kanner@Kirkland.com

(ii) if to the Administrative Agent or the Collateral Agent, to it at:

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Telecopy No.: [_____];

(iii) if to a Lender, to it at its address (or telecopy number) set forth on Annex I or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto with a copy to Latham & Watkins LLP, as follows:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attention: Mark Broude
Telecopy No.: (212) 751-4864

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10.01(a) or in accordance with the latest unrevoked direction from such party given in accordance with this Section 10.01(a), and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

Notices delivered through electronic communications to the extent provided in Section 10.01(b) below, shall be effective as provided in Section 10.01(b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may (subject to Section 10.01(d)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent (in a manner set forth in Section 10.01(a))

that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Collateral Agent or the Borrower may, in their respective sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to their respective approved procedures (including as set forth in Section 10.01(d)); *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (including by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, etc. Any party hereto may change its address, telecopier number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Posting. Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (ii) provides notice of any Default or Event of Default under this Agreement or (iii) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at [_____]@[_____] .com or at such other e-mail address(es) provided to the Borrower by the Administrative Agent from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. Nothing in this Section 10.01 shall prejudice the right of the Agents, any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

To the extent consented to by the Administrative Agent in writing from time to time, the Administrative Agent agrees that receipt of the Communications by the Administrative Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents.

Each Loan Party further agrees that the Administrative Agent may make the Communications available to the other Agents or the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar electronic transmission system (the "**Platform**"). The Platform is provided "as is" and "as available." The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the

communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform.

Section 10.02. **Waivers; Amendment.** (a) Generally. No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 10.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time. No notice or demand on the Borrower or any other Loan Party in any case shall entitle the Borrower or any other Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Required Consents. Except as otherwise expressly provided in this Agreement or any other Loan Document, subject to Section 10.02(c), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall:

- (i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant or Default or Event of Default (or any definition used, respectively, therein) shall constitute an increase in the Commitment of any Lender for purposes of this clause (i));
- (ii) reduce the principal amount, premium, if any, of any Loan (or payable in connection with the prepayment of such Loan at a given time) or reduce the rate of interest thereon (other than interest pursuant to Section 2.06(b)), or reduce any Fees payable hereunder, or change the form or currency of payment of any Obligation under the Loan Documents, without the written consent of each Lender directly affected thereby;
- (iii) postpone or extend the maturity of any Loan, or any scheduled date of payment of or the installment otherwise due on the principal amount of any Loan under Section 2.08, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment (other than a waiver of any increase in the interest rate pursuant to Section 2.06(b)), or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby;

(iv) change Section 2.14(b) or (c) or Section 10.02 in a manner that would alter the order of or the *pro rata* sharing of payments or setoffs required thereby, without the written consent of each Lender;

(v) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section 10.02) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender;

(vi) release all or substantially all of the Guarantors from their respective Loan Guarantees, or limit the liability of all or substantially all of the Guarantors in respect of such Loan Guarantees, without the written consent of each Lender;

(vii) except as expressly permitted in this Agreement or any Security Document, release all or substantially all of the Collateral from the Liens of the Security Documents and the Orders or alter the relative priorities of the Loan Obligations entitled to the Liens of the Security Documents and the Orders (except in connection with securing additional Loan Obligations equally and ratably with the other Loan Obligations), in each case without the written consent of each Lender; or

(viii) change Section 10.04(b) in a manner which further restricts assignments thereunder without the written consent of each Lender;

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by the Borrower, the Required Lenders and the Administrative Agent if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment, (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of, premium, if any, and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement, and (z) Section 2.16(b) is complied with.

Section 10.03. **Expenses; Indemnity; Damage Waiver.** (a) The Loan Parties agree, jointly and severally, to pay, promptly upon demand (as provided in clause (g) below in this Section 10.03):

(i) all reasonable costs and invoiced out-of-pocket expenses of the Administrative Agent and the Collateral Agent, limited to, in the case of counsel, the reasonable fees, charges and disbursements of one counsel (and, if necessary, of one local counsel for each applicable jurisdiction and one alternative firm of counsel in the event of any actual or potential conflict of interest) in connection with the preparation, negotiation, execution and delivery of the Loan Documents, the administration of the Loans and Commitments, the perfection and maintenance of the Liens securing the Collateral and any actual or proposed amendment, supplement or waiver of any of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated);

(ii) all costs and expenses incurred by the Administrative Agent or the Collateral Agent, including the fees, charges and disbursements of Advisors for the Administrative Agent

and the Collateral Agent, in connection with any action, claim, suit, litigation, investigation, inquiry or proceeding affecting the Collateral or any part thereof, in which action, claim, suit, litigation, investigation, inquiry or proceeding the Administrative Agent or the Collateral Agent is made a party or participates or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of the Administrative Agent or the Collateral Agent to defend or uphold the Liens granted by the Security Documents (including any action, claim, suit, litigation, investigation, inquiry or proceeding to establish or uphold the compliance of the Collateral with any applicable law);

(iii) all reasonable and invoiced out-of-pocket expenses of the Administrative Agent, the Collateral Agent and each of the Lenders (including the fees, charges and disbursements of one counsel to the Lenders and one counsel to the Administrative Agent and the Collateral Agent (and, if necessary, of one local counsel in each relevant jurisdiction and regulatory counsel) and consultants) incurred in connection with the enforcement or protection of its rights under the Loan Documents, including its rights under this Section 10.03(a), or in connection with the Loans made hereunder and the collection of the Loan Obligations, including all such reasonable and invoiced expenses incurred during any workout, restructuring or negotiations in respect of the Loan Obligations; and

(iv) all Other Taxes in respect of the Loan Documents.

(b) The Loan Parties agree, jointly and severally, to indemnify the Agents, each Lender and each of their respective Related Persons (each such Person being called an “**Indemnitee**”) against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities, fees, fines, penalties, actions, judgments, suits and related expenses, including reasonable Advisors fees, charges and disbursements (collectively, “**Claims**”), incurred by, imposed on or asserted against any Indemnitee, directly or indirectly, arising out of, in any way connected with, or as a result of (i) the execution, delivery, performance, administration or enforcement of the Loan Documents or any agreement or instrument contemplated thereby or the performance by the parties thereto of their respective obligations thereunder, (ii) any actual or proposed use of the proceeds of the Loans, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, (iv) any past, present or future non-compliance with, or violation of, or liability under, any Environmental Laws or Environmental Permits applicable to any Company or Subsidiary thereof, or any Company’s or any Subsidiary’s business, or any property presently or formerly owned, leased, or operated by any Company or Subsidiary thereof or their predecessors in interest, (v) the environmental condition of any property owned, leased, or operated by any Company or subsidiary thereof at any time, or the applicability of any applicable law relating to such property, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of any Company or Subsidiary thereof, (vi) the imposition of any environmental Lien encumbering any real property, (vii) the consummation of the transactions contemplated hereby (including the syndication of the Loans and the Commitments) or (viii) any actual or prospective action, claim, suit, litigation, investigation, inquiry or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party or otherwise, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities fees, fines, penalties, actions, judgments, suits or related costs or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have primarily resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) The Loan Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent and any affected Lender, which consent(s) will not be unreasonably withheld, the Loan Parties will not enter into any settlement of a Claim naming any Indemnitee in respect of the subject matter of clauses (i) through (ix) of Section 10.03(b) unless such settlement includes an explicit and unconditional release from the party bringing such Claim of such Indemnitee.

(d) The provisions of this Section 10.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of the Loans and any other Loan Obligations, the release of any Guarantor or of all or any portion of the Collateral, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents or any Lender. All amounts due under this Section 10.03 shall be accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(e) To the extent that the Loan Parties fail to indefeasibly pay any amount required to be paid by them to the Agents under Sections 10.03(a) or (b) in accordance with Section 10.03(g), each Lender severally agrees to pay to the Agents such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed Claim was incurred by or asserted against any of the Agents in its capacity as such. For purposes of this Section 10.03(e), a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the outstanding Loans and unused Commitments at the time.

(f) To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, exemplary, consequential, or punitive damages (including any loss of profits, business or anticipated savings) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee.

(g) All amounts due under this Section 10.03 shall be payable not later than 10 days after demand therefor.

Section 10.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Loan Parties may not assign or otherwise transfer any of their respective rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent and each Lender, which consent may be withheld in their respective sole discretion (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). Nothing in this Agreement or any other Loan Document, express or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent expressly provided in Section 10.04(e) and, to the extent expressly contemplated

hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) Any Lender shall have the right at any time to assign to one or more assignees (other than any Company or any Affiliate thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it), subject (other than assignments to an affiliate of a Lender or an Approved Fund) to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) and the acknowledgment of the Administrative Agent (such acknowledgment not to be unreasonably withheld, conditioned or delayed); *provided* that no consent of the Borrower shall be required for (x) an assignment pursuant to clause (i)(A) below, (y) if an Event of Default has occurred and is continuing, or (z) prior to the completion of the primary syndication of the Commitments and Loans (as determined by the Administrative Agent but which shall be no longer than fifteen (15) calendar days from the Closing Date):

(i) except in the case of (A) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or (B) an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500;

(iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(v) all assignments made by any Lender of all or a portion of such Lender's rights and obligations under this Agreement shall be by novation.

Subject to acceptance and recording thereof pursuant to Section 10.04(d), from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.12 and 10.03).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all

purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Collateral Agent and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice. The Administrative Agent is authorized to provide a copy of the Register to the Bankruptcy Court for the purpose of allowing the Bankruptcy Court to determine the Lenders of record for the purpose of determining the amount and identity of the holders of the Roll-Up Notes in accordance with the Final Order.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 10.04(b) and any written consent to such assignment required by Section 10.04(b), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 10.04(d). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with the requirements of this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.04(e).

(e) Any Lender shall have the right at any time, without the consent of, or notice to the Borrower, the Administrative Agent or any other Person to sell participations to any Person (other than any Company or any Affiliate thereof or a natural Person) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) is described in clauses (i), (ii) or (iii) of the proviso to Section 10.02(b) and (2) directly affects such Participant. Subject to Section 10.04(f), each Participant shall be entitled to the benefits of Section 2.12 and Section 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.04(b). To the extent permitted by applicable law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; *provided* that such Participant agrees in writing to be subject to Section 2.14(c) as though it were a Lender. Each Lender shall, acting solely for this purpose as an agent of the Borrower, maintain at one of its offices a register for the recordation of the names and addresses of its Participants, and the principal amounts and terms of its participations (the "**Participant Register**"); *provided* that no Lender shall be required to disclose the information contained in such Participant Register to any Person, except to the extent necessary to establish that any Loan, Note or other obligation hereunder or under any other Loan Document is in registered form for United States federal income tax purposes. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of the applicable participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.12(b) than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of the Borrower (which consent shall not be unreasonably withheld, delayed or conditioned) or such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.15 (including Section 2.15(d) and Section 2.15(h), as applicable) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 10.04(g) shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of the Borrower, the Administrative Agent or any other Person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, Administrative Agent for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(h) The words "execution," "signed," "signature," and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.05. **Survival of Agreement.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the reports, certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any Obligation under the Loan Documents and so long as the Commitments have not expired or terminated. The provisions of Article IX and Sections 2.12, 2.15, 9.06, 10.03 and 10.08 to 10.10 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. The obligations of the Borrower under this Agreement and the other Loan Documents shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or any other Loan Party in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 10.06. **Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent and/or the Lenders, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01 and 4.02, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 10.07. **Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08. **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of any Loan Party now or hereafter existing under this Agreement or any other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 10.09. **Governing Law; Jurisdiction; Consent to Service of Process.** (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction and, to the extent applicable, the Bankruptcy Code.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction and venue of the Bankruptcy Court, or in the event the Bankruptcy Court does not have or does not exercise jurisdiction, then to the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York. Subject to the immediately preceding sentence and clause (d) below, all judicial proceedings brought against any party arising out of or relating to any Loan Document or any of the Obligations, or for recognition or enforcement of any judgment, shall be brought in the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other

jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Agreement or any other Loan Document or otherwise shall affect any right that the Administrative Agent, any other Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopy or email) in Section 10.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

Section 10.10. **Waiver of Jury Trial.** Each party hereto hereby 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 or relating to any Loan Document, 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 by, among other things, the mutual waivers and certifications in this **Section 10.10**.

Section 10.11. **Headings; No Adverse Interpretation of Other Agreements.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. This Agreement may not be used to interpret any other loan or debt agreement or instrument of any Company or of any other Person. Any such loan or debt agreement or instrument may not be used to interpret this Agreement or any other Loan Document.

Section 10.12. **Confidentiality.** Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' and Approved Funds' directors, officers, employees, agents, advisors and other representatives, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority or any quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under the Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative

transaction relating to the Borrower and their obligations, (iii) any actual or prospective investor in a special purpose funding vehicle or (iv) any rating agency for the purpose of obtaining a credit rating applicable to any Loan or Loan Party, (g) with the consent of the Borrower or (h) to the extent such Information (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section 10.12 or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any Subsidiary. In addition, the Agents and the Lenders may disclose the existence of the Loan Documents and information about the Loan Documents to market data collectors, similar service providers to the financing community, and service providers to the Agents and the Lenders. For the purposes of this Section 10.12, “**Information**” shall mean all information received from the Borrower relating to the Borrower or any of its Subsidiaries or its business that is identified at the time of delivery as confidential, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 10.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.13. **Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the “**Charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.14. **Assignment and Acceptance**. To become a party to this Agreement, each Lender (other than the Administrative Agent and any other Lender that is a signatory hereto) shall deliver to the Administrative Agent an Assignment and Acceptance duly executed by such Lender, the Borrower (if the Borrower’s consent to such assignment is required hereunder) and the Administrative Agent.

Section 10.15. **Obligations Absolute**. To the fullest extent permitted by applicable law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Loan Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection or loss of priority of any Liens on any or all of the Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Loan Obligations;

(e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

Section 10.16. **Waiver of Defenses; Absence of Fiduciary Duties.** (a) Each of the Loan Parties hereby waives any and all suretyship defenses available to it as a Guarantor arising out of the joint and several nature of its respective duties and obligations hereunder (including any defense contained in Article VII).

(b) Each of the Loan Parties agrees that in connection with all aspects of the transactions contemplated hereby or by the other Loan Documents and any communications in connection therewith, the Loan Parties and their respective Affiliates, on the one hand, and each Lender, special purpose funding vehicle and Agent, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of any Lender, special purpose funding vehicle or any Agent or any of their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

Section 10.17. **USA Patriot Act.** Each Lender hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and taxpayer identification number of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act.

Section 10.18. **Judgment Currency.** (a) The Loan Parties' obligations hereunder and under the other Loan Documents to make payments in Dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than Dollars, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent or the respective Lender of the full amount of Dollars expressed to be payable to the Administrative Agent or such Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than Dollars (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in Dollars, the conversion shall be made at the Dollar Equivalent determined as of the Business Day immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the "**Judgment Currency Conversion Date**").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Loan Parties shall pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 10.18, such amounts shall include any premium and costs payable in connection with the purchase of Dollars.

Section 10.19. **Parties Including Trustees; Bankruptcy Court Proceedings.** Upon entry of the Interim Order (or when applicable, the Final Order), this Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Loan Party, the bankruptcy estate of each Loan Party, and any trustee, other bankruptcy estate representative or any successor in interest of any Loan Party in the Chapter 11 Cases or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agents and the Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any of the Chapter 11 Cases or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any of the Chapter 11 Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that any Agent files financing statements or otherwise perfect its Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Agents and each Lender. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Agents and each Lender shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, the Agents and each Lender with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed by their respective authorized officers or other authorized signatories as of the day and year first above written.

GLOBAL AVIATION HOLDINGS, INC.

By: _____
Name:
Title:

NORTH AMERICA AIRLINES, INC.

By: _____
Name:
Title:

WORLD AIRWAYS, INC.

By: _____
Name:
Title:

NEW ATA INVESTMENT INC.

By: _____
Name:
Title:

NEW ATA ACQUISITION INC.

By: _____
Name:
Title:

WORLD AIR HOLDINGS, INC.

By: _____
Name:
Title:

WORLD AIRWAYS PARTS COMPANY, LLC

By: _____
Name:
Title:

GLOBAL AVIATION VENTURES SPV LLC

By: _____
Name:
Title:

[_____] , as Administrative Agent
and Collateral Agent

By: _____
Name:
Title:

[_____], as a Lender

By: _____
Name:
Title:

Annex I

Initial Lenders and Commitments as of the Closing Date

<u>Lender</u>	<u>Address for Notices</u>	<u>Funded Amount of Initial Term Loan (USD)</u>	<u>Amount of Initial Term Loan Commitment (USD)</u>	<u>Amount of First Delayed Draw Term Loan Commitment (USD)</u>	<u>Amount of Second Delayed Draw Term Loan Commitment (USD)</u>
[]	[]	\$()	\$()	\$()	\$()
[]	[]	\$()	\$()	\$()	\$()
	Total	\$()	\$()	\$()	\$()

EXHIBIT A**[Form of]
ASSIGNMENT AND ACCEPTANCE**

Reference is made to that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of February [], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent for the Secured Parties. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

1. _____ (the “**Assignor**”) hereby irrevocably sells and assigns, without recourse, to the Assignee, and the Assignee hereby irrevocably purchases and assumes, from the Assignor, without recourse to the Assignor, effective as of the Effective Date set forth and defined below (but not prior to the registration of the information contained herein in the Register pursuant to Section 10.04(c) of the Credit Agreement), the interests set forth below (the “**Assigned Interest**”) in the Assignor’s rights and obligations under the Credit Agreement and the other Loan Documents, including, without limitation, the Commitment and the Loans which are outstanding on the Effective Date. From and after the Effective Date (i) the Assignee shall be a party to and be bound by the provisions of the Credit Agreement and, to the extent of the interests assigned by this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the Loan Documents and (ii) the Assignor shall, to the extent of the interests assigned by this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement.

2. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned hereby free and clear of any lien, encumbrance or other adverse claim created by the Assignor and that its Commitments, and the outstanding balances of its Loans, without giving effect to assignments thereof which have not become effective, are as set forth in this Assignment and Acceptance and (ii) it has all necessary power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) except as set forth in (a) above, the Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto, or the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto.

3. The Assignee (a) represents and warrants that (i) it is legally authorized to enter into this Assignment and Acceptance and (ii) it has all necessary power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and become a Lender under the Credit Agreement; (b) confirms that it has received a copy of the Credit Agreement and such other Loan Documents and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor, the Agents or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the

other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Agents by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. The effective date of this Assignment and Acceptance shall be the Effective Date of Assignment described in Schedule 1 hereto (the “**Effective Date**”). Following the execution of this Assignment and Acceptance, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to the Credit Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Administrative Agent, in its sole discretion, be earlier than three Business Days after the date of such acceptance and recording by the Administrative Agent). This Assignment and Acceptance will be delivered to the Administrative Agent together with [(a) if the Assignee is a Foreign Lender, the forms specified in Section 2.15(d) of the Credit Agreement, duly completed and executed by such Assignee]; (b) if the Assignee is not already a Lender under the Credit Agreement, an Administrative Questionnaire, and (c) a processing and recordation fee of \$3,500, if required under the Loan Documents.

5. Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments to the holder of record on the interest Payment Date.

6. From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a lender thereunder and under the other Loan Documents and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement.

7. This Assignment and Acceptance shall be construed in accordance with and governed by the law of the State of New York without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

SCHEDULE 1

to

Assignment and Acceptance

Effective Date of Assignment: _____

Legal Name of Assignor: _____

Legal Name of Assignee: _____

Assignee's Address for Notices: _____

Percentage Assigned of Loan/Commitment:

<u>Loan/Commitment</u>	<u>Principal Amount Assigned</u>	Percentage Assigned of Loan/Commitment (set forth, to at least 15 decimals, as a percentage of the Loans and the aggregate Commitments of <u>all</u> <u>Lenders thereunder</u>)
	\$	%

[Signature Page Follows]

The terms set forth above are hereby agreed to:

as Assignor

By: _____
Name:
Title:

as Assignor

By: _____
Name:
Title:

Consented and Accepted:

GLOBAL AVIATION HOLDINGS INC.,
as the Borrower¹

By: _____
Name:
Title:

Acknowledged:

[_____] ,
as Administrative Agent

By: _____
Name:
Title:

¹ To be completed to the extent consent is required pursuant to Section 10.04(b) of the Credit Agreement

EXHIBIT B**[Form of]
BORROWING REQUEST**

[_____] ,
as Administrative Agent for
the Lenders referred to below
[_____]

Attention:

Facsimile:

Re: Global Aviation Holdings Inc.

[Date]

Ladies and Gentlemen:

Reference is made to that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of February [], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the "**Borrower**"), the guarantors party thereto (the "Guarantors", and together with the Borrower, each a debtor-in-possession) (such term and each other term used but not defined herein that is defined in the Credit Agreement shall have the meaning given it in the Credit Agreement), the several banks and other financial institutions or entities from time to time party thereto (the "**Lenders**") and [_____], as administrative agent and collateral agent for the Lenders. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and that in connection therewith set forth below the terms on which such Borrowing is requested to be made:

(A)	Principal amount of Borrowing:	_____
(B)	Type of Borrowing	[ABR] [Eurodollar]
(C)	Date of Borrowing	_____
	(which is a Business Day):	
(C)	Location and number of account to which Borrowing is to be disbursed:	

The Borrower hereby represents and warrants that the conditions to lending specified in Section[s] [4.01 and] 4.02 of the Credit Agreement are satisfied as of the date hereof.

GLOBAL AVIATION HOLDINGS INC.

By: _____
Name:
Title:

EXHIBIT C

[Form of]
INTERCOMPANY NOTE

New York, New York
[date]

FOR VALUE RECEIVED, each of the undersigned, to the extent a borrower from time to time from any other entity listed on the signature pages hereto as a Payor (each, in such capacity, a “**Payor**”), hereby promises to pay on demand to the order of each other entity listed below as a payee (each, in such capacity, a “**Payee**”), in lawful money of the United States of America in immediately available funds, at such location in the United States of America as a Payee shall from time to time designate, the unpaid principal amount of all loans and advances (including trade payables) made by such Payee to such Payor. Each Payor promises also to pay interest on the unpaid principal amount of all such loans and advances in like money at said location from the date of such loans and advances until paid at such rate per annum as shall be agreed upon from time to time by such Payor and such Payee.

This note (“**Note**”) is an Intercompany Note referred to in the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement dated as of February [], 2011 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among Global Aviation Holdings Inc., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [], as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties, and is subject to the terms thereof, and shall be pledged by each Payee pursuant to the Security Agreement, to the extent required pursuant to the terms thereof. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. Each Payee hereby acknowledges and agrees that the Administrative Agent may exercise all rights provided in the Credit Agreement and the Security Agreement with respect to this Note.

Anything in this Note to the contrary notwithstanding, the indebtedness evidenced by this Note owed by any Payor that is Borrower or a Guarantor to any Payee other than Borrower shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Obligations of such Payor under the Credit Agreement, including, without limitation, where applicable, under such Payor’s guarantee of the Obligations under the Credit Agreement (such Obligations and other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest thereon accruing after the commencement of any proceedings referred to in clause (i) below, whether or not such interest is an allowed claim in such proceeding, being hereinafter collectively referred to as “**Senior Indebtedness**”):

(i) in the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to any Payor or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of such Payor, whether or not involving insolvency or bankruptcy, then (x) the holders of Senior Indebtedness shall be paid in full in cash in respect of all amounts constituting Senior Indebtedness before any Payee is entitled to receive (whether directly or indirectly), or make any demands for, any payment on account of this Note and (y) until the holders of Senior Indebtedness are paid in full in cash in respect of all amounts constituting Senior Indebtedness, any payment or distribution to which such Payee would otherwise be entitled (other than debt securities of such Payor that are subordinated, to at least the

same extent as this Note, to the payment of all Senior Indebtedness then outstanding (such securities being hereinafter referred to as “**Restructured Debt Securities**”) shall be made to the holders of Senior Indebtedness;

(ii) if any default occurs and is continuing with respect to any Senior Indebtedness (including any Default under the Credit Agreement), then no payment or distribution of any kind or character shall be made by or on behalf of the Payor or any other Person on its behalf with respect to this Note; and

(iii) if any payment or distribution of any character, whether in cash, securities or other property (other than Restructured Debt Securities), in respect of this Note shall (despite these subordination provisions) be received by any Payee in violation of clause (i) or (ii) before all Senior Indebtedness shall have been paid in full in cash, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness (or their representatives), ratably according to the respective aggregate amounts remaining unpaid thereon, to the extent necessary to pay all Senior Indebtedness in full in cash.

To the fullest extent permitted by law, no present or future holder of Senior Indebtedness shall be prejudiced in its right to enforce the subordination of this Note by any act or failure to act on the part of any Payor or by any act or failure to act on the part of such holder or any trustee or agent for such holder. Each Payee and each Payor hereby agree that the subordination of this Note is for the benefit of the Administrative Agent, the Lenders and the Administrative Agent and the Lenders are obligees under this Note to the same extent as if their names were written herein as such and the Administrative Agent may, on behalf of the itself and the Lenders, proceed to enforce the subordination provisions herein.

The indebtedness evidenced by this Note owed by any Payor that is not Borrower or a Guarantor shall not be subordinated to, and shall rank *pari passu* in right of payment with, any other obligation of such Payor.

Nothing contained in the subordination provisions set forth above is intended to or will impair, as between each Payor and each Payee, the obligations of such Payor, which are absolute and unconditional, to pay to such Payee the principal of and interest on this Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Payee and other creditors of such Payor other than the holders of Senior Indebtedness.

Each Payee is hereby authorized to record all loans and advances made by it to any Payor (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting prima facie evidence of the accuracy of the information contained therein.

Each Payor hereby waives presentment, demand, protest or notice of any kind in connection with this Note. All payments under this Note shall be made without offset, counterclaim or deduction of any kind.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

[Signature Page Follows]

IN WITNESS WHEREOF, each Payor and Payee has caused this Intercompany Note to be executed and delivered by its proper and duly authorized officer as of the date set forth above.

GLOBAL AVIATION HOLDINGS INC.,
as a Payor and Payee

By: _____
Name:
Title:

NORTH AMERICAN AIRLINES, INC.,
as a Payor and Payee

By: _____
Name:
Title:

WORLD AIRWAYS, INC.,
as a Payor and Payee

By: _____
Name:
Title:

NEW ATA INVESTMENT INC.,
as a Payor and Payee

By: _____
Name:
Title:

NEW ATA ACQUISITION INC.,
as a Payor and Payee

By: _____
Name:
Title:

WORLD AIR HOLDINGS, INC.,
as a Payor and Payee

By: _____
Name:
Title:

WORLD AIRWAYS PARTS COMPANY, LLC,
as a Payor and Payee

By: _____
Name:
Title:

GLOBAL AVIATION VENTURES SPV LLC,
as a Payor and Payee

By: _____
Name:
Title:

GLOBAL SHARED SERVICES, INC.,
as a Payor and Payee

By: _____
Name:
Title:

World RISK SOLUTIONS, LTD.,
as a Payor and Payee

By: _____
Name:
Title:

EXHIBIT D

**[Form of]
COMPLIANCE CERTIFICATE**

This Compliance Certificate is delivered to you pursuant to Section 5.02(a) of that certain Senior Secured, Super-Priority Debtor-in Possession Credit Agreement, dated as of February [], 2012 (as amended, amended and restated, supplemented, replaced or modified from time to time, the “**Credit Agreement**”), among Global Aviation Holdings Inc., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “Guarantors”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [], as Administrative Agent and Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

1. I am the duly elected, qualified and acting [*specify type of Financial Officer*] of the Borrower.

2. I have reviewed and am familiar with the contents of this Certificate.

3. I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the “**Financial Statements**”). Such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence, as of the date of this Certificate, of any condition or event which constitutes a Default or an Event of Default [, except as set forth below]. The Financial Statements fairly present, in all material respects, the financial position and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes).

4. Attached hereto as Attachment 2 are the computations showing compliance with the covenants set forth in Section 6.10 of the Credit Agreement for the month ended [].

IN WITNESS WHEREOF, I execute this Certificate this ___ day of [].

GLOBAL AVIATION HOLDINGS INC.

By: _____
Name:
Title: [Financial Officer]

**ATTACHMENT 1
to Compliance Certificate**

Financial Statements

The information described herein is as of [_____], and pertains to the month ended [_____].

**ATTACHMENT 2
to Compliance Certificate**

[Set forth calculation of Minimum Consolidated EBITDA covenant]

**ATTACHMENT 3
to Compliance Certificate**

[Set forth calculation of Minimum Liquidity covenant for each week within such month]

**ATTACHMENT 4
to Compliance Certificate**

[Set forth calculation of Capital Expenditures covenant]

EXHIBIT E**[Form of]
NOTE**

\$[_____]

New York, New York

[_____]

FOR VALUE RECEIVED, the undersigned, Global Aviation Holdings Inc., a Delaware corporation (the “**Borrower**”), hereby promises to pay to [_____] or its registered assigns (the “**Lender**”) on the Final Maturity Date (as defined in the Credit Agreement referred to below) in lawful money of the United States and in immediately available funds, the principal amount of [_____] DOLLARS or, if less, the aggregate unpaid principal amount of all Loans of the Lender outstanding under the Credit Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Credit Agreement. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time at the rates, and on the dates, specified in Section 2.06 of the Credit Agreement. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein.

The holder of this Note may endorse and attach a schedule to reflect the date, Type and amount of each Loan of the Lender outstanding under the Credit Agreement and the date and amount of each payment or prepayment of principal hereof; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of the Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of February [___], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrower, the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [_____], as administrative agent and collateral agent for the Lenders. This Note is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein.

This Note is secured and guaranteed as provided in the Credit Agreement and the Security Agreement. Reference is hereby made to the Credit Agreement and the Security Agreement for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuation of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided therein.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE

**RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT
PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY
THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW
PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER
JURISDICTION.**

GLOBAL AVIATION HOLDINGS INC.,
as the Borrower

By: _____
Name:
Title:

EXHIBIT F

**[Form of]
INTEREST ELECTION REQUEST**

[_____] ,
as Administrative Agent
[_____]

Attention: [_____]

[Date]

Re: Global Aviation Holdings Inc.

Ladies and Gentlemen:

This Interest Election Request is delivered to you pursuant to Section 2.08(b) of the Senior Secured Super-Priority Debtor-in-Possession Credit Agreement dated as of February [____], 2012 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [_____], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties.

The Borrower hereby requests that on [_____]² (the “**Interest Election Date**”),

1. \$[_____] of the presently outstanding principal amount of the Loans originally made on [_____],
2. and all presently being maintained as [ABR Loans] [Eurodollar Loans],
3. be [converted into] [continued as],
4. [Eurodollar Loans having an Interest Period of one month] [ABR Loans].

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the proposed Interest Election Date, both before and after giving effect thereto and to the application of the proceeds therefrom:

² Shall be a Business Day that is (a) the date hereof in the case of a conversion into ABR Loans to the extent this Interest Election Request is delivered to the Administrative Agent prior to 9:00 A.M., New York City time on the date hereof, otherwise the Business Day following the date of delivery hereof, and (b) three Business Days following the date hereof in the case of a conversion into/continuation of Eurodollar Loans to the extent this Interest Election Request is delivered to the Administrative Agent prior to 11:00 A.M. New York City time on the date hereof, otherwise the fourth Business Day following the date of delivery hereof, in each case.

- (a) the foregoing [conversion] [continuation] complies with the terms and conditions of the Credit Agreement (including, without limitation, Section 2.08 of the Credit Agreement); and
- (b) no Default has occurred and is continuing, or would result from such proposed [conversion] [continuation].

[Signature Page Follows]

The Borrower has caused this Interest Election Request to be executed and delivered by its duly authorized officer as of the date first written above.

GLOBAL AVIATION HOLDINGS INC.

By: _____
Name:
Title:

EXHIBIT G-1

[Form of]

NON-BANK CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of February [●], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Global AVIATION HOLDINGS INC., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [_____], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any note(s) evidencing such Loan(s)) or other obligations in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name
Title:

Date: _____, 20[]

EXHIBIT G-2

[Form of]

NON-BANK CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of February [●], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [_____], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name
Title:

Date: _____, 20[]

EXHIBIT G-3

[Form of]

NON-BANK CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of February [●], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the "Borrower"), the guarantors party thereto (the "**Guarantors**"), and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the "**Lenders**") and [_____], as administrative agent (in such capacity, "**Administrative Agent**") and as collateral agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name
Title:

Date: _____, 20[]

EXHIBIT G-4

[Form of]

NON-BANK CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement dated as of February [●], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among GLOBAL AVIATION HOLDINGS INC., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”) and [_____], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the loan(s) (as well as any note(s) evidencing such Loan(s)) or other obligations in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any note(s) evidencing such Loan(s)) or other obligations, (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a 10-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so0. inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name
Title:

Date: _____, 20[]

EXHIBIT H-1

[Form of Opinion of Kirkland & Ellis LLP]

EXHIBIT H-2

[Form of Opinion of the General Counsel of the Loan Parties]

EXHIBIT I**[Form of]
JOINDER AGREEMENT**

THIS JOINDER IN CREDIT AGREEMENT AND SECURITY AGREEMENT (this “**Joinder**”) is executed as of _____, ____ , by [NAME OF NEW SUBSIDIARY], a _____ [corporation] [limited liability company] [partnership] (the “**Joining Party**”), and delivered to [_____], as administrative agent (in such capacity, “**Administrative Agent**”) and as collateral agent (in such capacity, “**Collateral Agent**”), for the benefit of the Secured Parties (as defined in the Credit Agreement referred to below).

W I T N E S S E T H:

WHEREAS, Global Aviation Holdings Inc., a Delaware corporation (the “**Borrower**”), the guarantors party thereto (the “**Guarantors**”, and together with the Borrower, each a debtor-in-possession), the several banks and other financial institutions or entities from time to time party thereto (the “**Lenders**”), the Administrative Agent and the Collateral Agent, the Guarantors and other parties thereto have entered into a Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of February [___], 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time the “**Credit Agreement**”; except as otherwise defined herein, terms used herein and defined in the Credit Agreement shall be used herein as therein defined) providing for the making of Loans to the Borrowers as contemplated therein;

WHEREAS, the Joining Party is a Subsidiary of the Borrower and desires, or is required pursuant to the provisions of the Credit Agreement, to become a Guarantor under the Credit Agreement; and

WHEREAS, the Joining Party has obtained benefits from the incurrence of Loans by the Borrowers pursuant to the Credit Agreement, and, accordingly, desires to execute this Joinder in order to satisfy the requirements described in the preceding paragraph.

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to the Joining Party, the receipt and sufficiency of which are hereby acknowledged, the Joining Party hereby makes the following representations and warranties to the Secured Parties and hereby covenants and agrees with each Secured Party as follows:

1. By this Joinder, the Joining Party becomes a Guarantor for all purposes under the Credit Agreement, pursuant to Section 5.12 thereof.

2. The Joining Party agrees that, upon its execution hereof, it will become a Guarantor under the Credit Agreement with respect to all Loan Obligations, and will be bound by all terms, conditions and duties applicable to a Guarantor under the Credit Agreement and the other Loan Documents. Without limitation of the foregoing, and in furtherance thereof, the Joining Party absolutely, unconditionally and irrevocably, and jointly and severally, guarantees the due and punctual payment and performance when due of all Loan Obligations (on the same basis as the other Guarantors under the Credit Agreement).

4. The Joining Party hereby makes and undertakes, as the case may be, each covenant, and, solely with respect to itself and, if applicable, its Subsidiaries, each representation and warranty made by, and as a Guarantor pursuant to the Credit Agreement (except to the extent any such representation or warranty relates solely to an earlier date in which case such representation and warranty shall be true and

correct as of such earlier date), and agrees to be bound by all covenants, agreements and obligations of a Guarantor pursuant to the Credit Agreement and all other Loan Documents to which it is or becomes a party.

6. This Joinder shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of and be enforceable by each of the parties hereto and its successors and assigns, provided, however, that the Joining Party may not assign any of its rights, obligations or interest hereunder or under any other Loan Document except as otherwise permitted by the Loan Documents. **THIS JOINDER SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.** This Joinder may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument. In the event that any provision of this Joinder shall prove to be invalid or unenforceable, such provision shall be deemed to be severable from the other provisions of this Joinder which shall remain binding on all parties hereto.

7. From and after the execution and delivery hereof by the parties hereto, this Joinder shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents.

8. The effective date of this Joinder is [_____], 20__.

* * *

IN WITNESS WHEREOF, the Joining Party has caused this Joinder to be duly executed as of the date first above written.

[NAME OF NEW SUBSIDIARY]

By: _____
Name:
Title:

Accepted and Acknowledged by:

[_____] ,
as Administrative Agent and as Collateral Agent

By: _____
Name:
Title:

EXHIBIT J

[Budget]

Global Aviation Holdings Inc. (Consolidated)
Weekly Cash Summary - DIP Budget

(\$ in millions)

Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	13 weeks Post-filing
Week Ending	2/24/2012	3/2/2012	3/9/2012	3/16/2012	3/23/2012	3/30/2012	4/6/2012	4/13/2012	4/20/2012	4/27/2012	5/4/2012	5/11/2012	5/18/2012	
Cash Balance: Beginning of Period ⁽¹⁾	\$32.8	\$15.8	\$12.3	\$4.5	\$5.6	\$6.5	\$0.9	(\$11.8)	(\$13.4)	(\$9.0)	(\$8.6)	(\$9.3)	(\$11.6)	\$32.8
Military flying (international & domestic)	12.4	12.6	12.6	10.8	10.4	10.4	10.4	10.2	10.3	10.3	9.8	9.8	9.0	139.0
Adjustment to TRANSCOM Receipts	-	-	-	-	-	-	-	-	-	-	-	0.5	-	0.5
Military fuel reconciliation	(3.4)	(1.9)	(1.2)	-	-	-	(3.6)	-	-	-	-	-	-	(10.2)
Adjusted Military flying	9.0	10.7	11.4	10.8	10.4	10.4	6.8	10.2	10.3	10.3	9.8	10.3	9.0	129.3
Commercial passenger	0.1	0.1	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.3	0.3	0.3	4.1
Commercial cargo	3.3	2.8	0.5	1.0	4.6	0.7	2.8	0.6	6.3	0.5	3.3	0.5	3.1	29.9
Maintenance reserve reimbursement	-	-	-	-	-	-	0.5	-	-	-	2.1	-	-	2.5
Other	(0.0)	-	0.3	-	-	-	0.3	0.0	-	-	-	0.3	0.0	1.0
Total receipts	12.3	13.5	12.7	12.1	15.4	11.6	10.7	11.2	17.0	11.2	15.5	11.4	12.5	167.0
Disbursements:														
Total aircraft and engine leases	3.8	2.6	1.5	0.7	1.6	4.0	5.8	0.2	0.5	1.8	1.5	1.0	0.5	25.6
Total maintenance	5.3	2.0	4.1	1.9	1.1	4.5	0.9	3.2	2.4	1.4	2.3	2.8	2.1	33.8
Compensation and benefits	5.1	1.3	4.5	1.3	4.0	0.2	5.4	0.2	2.4	2.4	2.3	2.5	2.1	33.8
Fuel	9.3	5.9	5.6	3.1	4.9	5.8	3.0	5.0	4.8	2.8	5.8	4.3	4.3	64.5
General	5.7	5.2	4.9	3.9	2.8	2.6	2.7	4.2	2.5	2.4	2.6	3.2	2.4	45.1
Professional Fees	0.1	-	-	-	0.1	-	5.7	-	-	-	1.7	-	-	7.5
Total disbursements	29.3	17.0	20.5	11.0	14.5	17.1	23.5	12.8	12.6	10.7	16.2	13.7	11.4	210.3
Net cash flow	(17.0)	(3.5)	(7.8)	1.1	0.9	(5.5)	(12.7)	(1.6)	4.4	0.4	(0.7)	(2.3)	1.1	(43.3)
Cumulative Net Cash Flow	(17.0)	(20.6)	(28.4)	(27.3)	(26.4)	(31.9)	(44.6)	(46.2)	(41.9)	(41.4)	(42.1)	(44.4)	(43.3)	(43.3)
Cash balance: End of period ⁽¹⁾	15.8	12.3	4.5	5.6	6.5	0.9	(11.8)	(13.4)	(9.0)	(8.6)	(9.3)	(11.6)	(10.5)	(10.5)
DIP Funding	-	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	30.0	30.0	30.0	30.0	30.0
Less: Interest	-	-	-	-	-	(0.2)	-	-	-	(0.2)	-	-	-	(0.4)
Less: Fees	-	(0.9)	-	-	-	-	-	-	-	-	-	-	-	(0.9)
Net DIP Cash	-	14.1	14.1	14.1	14.1	13.9	13.9	13.9	13.9	28.7	28.7	28.7	28.7	28.7
Total Liquidity (Cash + DIP)	\$15.8	\$26.4	\$18.6	\$19.7	\$20.6	\$14.8	\$2.1	\$0.5	\$4.9	\$20.1	\$19.4	\$17.1	\$18.2	\$18.2

Notes:

(1) Includes World Risk Solutions Ltd.