

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

In re:

GARDEN FRESH RESTAURANT  
INTERMEDIATE HOLDING, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-12167 (CSS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364 AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH COLLATERAL OF PREPETITION SECURED PARTIES, AND (D) GRANT ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND 4001(c); AND (III) GRANTING RELATED RELIEF**

Garden Fresh Restaurant Corp., as a debtor and debtor in possession (the "Company"), Garden Fresh Holdings, Inc. ("Parent") and their affiliated debtors in the above-captioned cases (together with the Company and Parent, collectively, the "Debtors") hereby submit this motion (the "Motion") for the entry of an interim order, substantially in the form annexed hereto as Exhibit A (the "Interim Order"), and a final order (the "Final Order" and, together with the Interim Order, the "Orders"), under sections 105(a), 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1(b), 4001-1, 4001-2, and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"),

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Garden Fresh Restaurant Intermediate Holding, LLC (7513); Garden Fresh Holdings, Inc. (8804); GF Holdings, Inc. (8783); Garden Fresh Restaurant Corp. (8786); and Garden Fresh Promotions, LLC (1376). The location of the Debtors' corporate headquarters is 15822 Bernardo Center Drive, Suite A, San Diego, California 92127.

(I) authorizing the Debtors to (A) enter into a postpetition financing arrangement (as amended, modified and in effect from time to time, the “DIP Facility” and loans advanced thereunder, the “DIP Loans”) on the terms and conditions set forth in the Interim Order and that certain Senior Secured Debtor-in-Possession Credit Agreement (substantially in the form attached hereto as Exhibit B, and as hereafter amended, restated, supplemented, or otherwise modified from time to time, in accordance with the Interim Order, the “DIP Credit Agreement”), dated as of October 3, 2016, by and among the Company, as borrower, each of the other Debtors, as guarantors, Cortland Capital Market Services LLC, as administrative agent and collateral agent (in such capacities, collectively, the “DIP Agent”) and the lenders named therein (the “DIP Lenders” and, together with the DIP Agent and any other party to which DIP Obligations (as defined herein) are owed, the “DIP Parties”) and grant senior security interests and superpriority administrative expense status with respect to the DIP Obligations (the DIP Credit Agreement together with all agreements, documents, certificates, and instruments delivered or executed from time to time in connection therewith, each as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and the Interim Order, collectively, the “DIP Documents”), (B) use cash collateral (as that term is defined in section 363(a) of the Bankruptcy Code and described in the Interim Order, the “Cash Collateral”) and (C) provide adequate protection to the TLA Agent, TLA Lenders, TLB Agent, TLB Lenders, TLC Agent, TLC Lenders, TLD Agent, and TLD Lenders (each as defined herein), as described in the Interim Order; (II) scheduling interim and final hearings pursuant to Bankruptcy Rule 4001 with respect to the relief requested herein; and (III) granting related relief. In support of the Motion and the relief requested herein, the Debtors rely on and incorporate by reference the *Declaration of John D. Morberg in Support of Chapter 11 Petitions and First Day Motions* (the

“First Day Declaration”), which was filed with the Court concurrently herewith, and respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of these cases and this Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a), 361, 362, 363, 364 and 507, and Bankruptcy Rules 2002, 4001, 6004 and 9014, and Rules 2002-1, 4001-2, and 9013-1(m) of the Local Rules.

### **BACKGROUND**

#### **A. Introduction**

3. On the date hereof (the “Petition Date”), each of the Debtors commenced in this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. As of the date hereof, no official committee of unsecured creditors has been appointed, and no request for appointment of a chapter 11 trustee or examiner has been made.

5. Prior to the Petition Date, the Debtors entered into a Restructuring Support Agreement with a significant number of their key stakeholders (the “Restructuring Support Agreement”) that contemplates a sale pursuant to section 363 of the Bankruptcy Code on or before December 5, 2016 (which date can be extended by thirty days with the consent of the TLA Lenders and TLB Lenders), and provides for, among other things, (i) a stalking horse credit bid by Debtors’ TLB Lenders and (ii) a loan by the TLB Lenders to fund these chapter 11 cases through the closing of the sale.

6. Additional factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these chapter 11 cases, is set forth in detail in the First Day Declaration.

**B. Overview of the Debtors' Businesses**

7. The Debtors operate one hundred twenty-four casual dining restaurants across fourteen states in the United States under "Souplantation" and "Sweet Tomato" and other brands. The restaurants offer an array of freshly baked breads, pizzas and other goods, as well as freshly prepared soups, salads and pastas.

8. Farmer partners directly source the Debtors' restaurants. Menu items are then prepared from scratch, daily. The Debtors operate seventeen central kitchens (two standalone) that provide large-scale operational support to all locations. The central kitchens cut vegetables, bake bread and prepare soups, salad kits and mixes for cookies and muffin dough. The two central kitchens service from two to thirty-one restaurants depending on geography. Two internal distribution centers in California and Georgia serve local operations. Over two million people are part of the Debtors' "Club Veg" customer loyalty program, which makes up 35% of all restaurant sales.

**C. The Debtors' Prepetition Capital Structure**

9. As of the Petition Date, the substantial majority of the Debtors' liabilities consisted of funded debt (i.e., not trade debt) comprised of four tranches of term loan debt: (i) the term loan, tranche A, and other credit extensions (including the revolving loans and issuance of letters of credit) (collectively, the "Term Loan A"), provided under that certain Financing Agreement, dated as of October 3, 2013, by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a "Borrower" or "Guarantor" thereunder, the lenders party thereto from time to time (collectively, the "TLA Lenders"), and Cerberus Business Finance,

LLC, as administrative agent and collateral agent for the TLA Lenders (the “TLA Agent”) (as amended from time to time, the “TLA Agreement,” and together with any other documents, schedules, instruments, or agreements related thereto, the “TLA Loan Documents”); (ii) the term loan, tranche B (the “Term Loan B”), provided under that certain Financing Agreement dated as of October 3, 2013, by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a “Borrower” or “Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLB Lenders”), and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the TLB Lenders (the “TLB Agent”) (as amended from time to time, the “TLB Agreement,” and together with any other documents, schedules, instruments, or agreements related thereto, the “TLB Loan Documents”); (iii) the term loan, tranche C (the “Term Loan C”), provided under that certain Financing Agreement dated as of October 3, 2013, by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a “Borrower” or “Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLC Lenders”), and Apollo Investment Corporation, as administrative agent and collateral agent for the TLC Lenders, (the “TLC Agent”) (as amended from time to time, the “TLC Agreement,” and together with any other documents, schedules, instruments, or agreements related thereto, the “TLC Loan Documents”); and (iv) the term loan, tranche D (the “Term Loan D”), provided under that certain Financing Agreement dated as of October 3, 2013, by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a “Borrower” or “Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLD Lenders” and, together with the TLA Lenders, the TLB Lenders and the TLC Lenders, the “Prepetition Lenders”), and Apollo Investment Corporation, as administrative agent and collateral agent for the TLD Lenders (the “TLD Agent” and, together with the TLA Agent, the

TLB Agent and the TLC Agent, the “Prepetition Agents” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”) (as amended from time to time, the “TLD Agreement,” and together with any other documents, schedules, instruments, or agreements related thereto, the “TLD Loan Documents” and, together with the TLA Loan Documents, the TLB Loan Documents and the TLC Loan Documents, the “Prepetition Credit Documents”).

10. As part of the TLA Agreement, a revolving credit facility is included which has an aggregate principal amount not to exceed \$10,000,000 at any time outstanding. This includes a sub-facility for the issuance of letters of credit. The Company currently has no borrowings (\$0.0) outstanding against the revolving credit facility. The Company has issued \$4,585,000 in letters of credit against the credit facility. The letters of credit were issued as collateral to the Company’s workers’ compensation insurance providers (Travelers - \$4,210,000, Chubb - \$325,000, and Zurich - \$50,000) for future workers’ compensation claims. The unfunded portion of the credit facility is \$5,415,000. The Company incurs a fee of 8.50% on letters of credit issued and 0.5% for the unfunded portion of the credit facility. These fees are paid quarterly on the first business day of each calendar quarter.

**a. The TLA Obligations**

11. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLA Lenders and TLA Agent, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued in the aggregate outstanding principal amount under the TLA Loan Documents of not less than \$87,366,250, plus accrued and unpaid interest and fees with respect thereto (which, as of October 1, 2016, was not less than \$840,851.50, which amount, for the avoidance of doubt, does not include the TLA Agent’s and the TLA Lenders’ accrued and unpaid attorneys’ fees, costs, and expenses, or any “Applicable Prepayment Premium” (as defined in the TLA Loan Documents) or any other premium, make-whole or

penalty payments otherwise required by the terms of the TLA Loan Documents upon a prepayment or acceleration of the TLA Obligations) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLA Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Company's obligations pursuant to the TLA Loan Documents, collectively the "TLA Obligations"). To secure the TLA Obligations, the Company granted to the TLA Agent and the TLA Lenders a security interest in and lien upon (the "TLA Liens") all "Collateral" under and as defined in the TLA Loan Documents (collectively, the "TLA Collateral").

**b. The TLB Obligations**

12. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLB Lenders and TLB Agent, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate under the TLB Loan Documents equal to \$35,662,159.70 (including, without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto, but, for the avoidance of doubt, not including the TLB Agent's and the TLB Lenders' accrued and unpaid attorneys' fees, costs, and expenses, or any "Applicable Prepayment Premium" (as defined in the TLB Loan Documents) or any other premium, make-whole or penalty payments otherwise required by the terms of the TLB Loan Documents upon a prepayment or acceleration of the TLB Obligations) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLB Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations,

and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Company's obligations pursuant to the TLB Loan Documents, collectively the "TLB Obligations"). To secure the TLB Obligations, the Company granted to the TLB Agent and the TLB Lenders a security interest in and lien upon (the "TLB Liens") all "Collateral" under and as defined in the TLB Loan Documents (collectively, the "TLB Collateral").

**c. The TLC Obligations**

13. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLC Lenders and TLC Agent, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate outstanding principal amount under the TLC Loan Documents of not less than \$15,737,595, plus accrued and unpaid interest and fees with respect thereto (which, as of the Petition Date, was not less than \$4,067,241.85) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLC Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Company's obligations pursuant to the TLC Loan Documents, collectively the "TLC Obligations"). To secure the TLC Obligations, the Company granted to the TLC Agent and the TLC Lenders a security interest in and lien upon (the "TLC Liens") all "Collateral" under and as defined in the TLC Loan Documents (collectively, the "TLC Collateral").

**d. The TLD Obligations**

14. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLD Lenders and TLD Agent, without defense, counterclaim or of set of any kind, in respect of

loans made in the aggregate outstanding principal amount under the TLD Loan Documents of not less than \$33,305,369, plus accrued and unpaid interest and fees with respect thereto (which, as of the Petition Date, was not less than \$18,639,528.38) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLD Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Company's obligations pursuant to the TLD Loan Documents, collectively the "TLD Obligations" and, together with the TLA Obligations, the TLB Obligations and the TLC Obligations, the "Prepetition Secured Obligations"). To secure the TLD Obligations, the Company granted to the TLD Agent and the TLD Lenders a security interest in and lien upon (the "TLD Liens" and, together with the TLA Liens, the TLB Liens and the TLC Liens, the "Prepetition Liens") all "Collateral" under and as defined in the TLD Loan Documents (collectively, the "TLD Collateral" and, together with the TLA Collateral, the TLB Collateral and the TLC Collateral, the "Prepetition Collateral").

**e. The Intercreditor and Subordination Agreements**

15. Certain of the Debtors are party to (a) that certain Intercreditor Agreement, dated October 3, 2013, by and among certain of the Debtors, the TLA Agent, the TLA Lenders, the TLB Agent, and the TLB Lenders (the "Senior Intercreditor Agreement"), (b) that certain Intercreditor and Subordination Agreement, dated October 3, 2013, by and among certain of the Debtors, the Prepetition Agents, and the Prepetition Lenders (the "Junior Intercreditor Agreement"), and (c) that certain Intercreditor and Subordination Agreement, dated October 3, 2013, by and among certain of the Debtors, the TLC Agent, and the TLD Agent (together with

the Senior Intercreditor Agreement and the Junior Intercreditor Agreement, the “Intercreditor Agreements”), setting forth certain respective rights and obligations with respect to repayment and liens on assets secured by property of the Debtors. Each of the Intercreditor Agreements constitutes a legal, valid, enforceable and binding “subordination agreement” within the meaning of Bankruptcy Code section 510(a). Other than as expressly provided in the Interim Order, the DIP Obligations, DIP Liens, and DIP Superpriority Claims (each as defined herein) are subject to the same terms, obligations and restrictions under the Senior Intercreditor Agreement as if they were TLB Liens and TLB Obligations, as applicable. Pursuant to the Junior Intercreditor Agreement, the TLC Agent and the TLD Agent have limited rights to contest and/or object to the DIP Facility and the Debtors’ use of Cash Collateral as provided in the Interim Order. Upon the incurrence of the DIP Obligations by the Debtors, the aggregate amount of all outstanding TLA Obligations, TLB Obligations and DIP Obligations will not exceed the Maximum Senior Principal Amount (as defined in the Junior Intercreditor Agreement).

**D. The Debtors’ Need for Use of Cash Collateral and Postpetition Financing**

16. In order to operate during these chapter 11 cases and effectuate the terms of the Restructuring Support Agreement, the Debtors will need to utilize prepetition collateral (including the Cash Collateral), as well as obtain additional, postpetition financing. Without the immediate use of the Cash Collateral and the DIP Facility, the Debtors would be unable to pay operating expenses, including, without limitation, amounts coming due to vendors, as well as employee payroll and other benefits, rent, utilities and the various other items reflected in the Approved Budget<sup>2</sup>. Based on the Debtors’ projections, without immediate use of the Cash

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<sup>2</sup> Capitalized terms not otherwise defined or referenced herein shall have the meanings ascribed to them in the DIP Credit Agreement, as applicable. To the extent the use, definition or meaning of a capitalized term herein conflicts with the term’s use, definition or meaning as provided for in the DIP Credit Agreement, the use, definition or meaning of the capitalized term found in the DIP Credit Agreement shall control.

Collateral and the DIP Facility, the Debtors' cash funds would be exhausted almost immediately.

A copy of the Approved Budget is attached hereto as Exhibit C.

17. As discussed in greater detail below, the Debtors believe that the use of Cash Collateral and entry into each of the DIP Documents, including the DIP Credit Agreement, is necessary to maintain the value of the Debtors' businesses as a going concern and prevent the harm to the Debtors' employees and business operations that would result without access to liquidity to pay such operating expenses.

**RELIEF REQUESTED:**

18. By this Motion, the Debtors seek entry of the Interim and Final Orders, *inter alia*:

(a) authorizing the Debtors to obtain postpetition secured debtor in possession financing in an aggregate principal amount of up to \$4,500,000 under the DIP Facility pursuant to the DIP Documents, including an initial draw of \$1,000,000 on an interim basis, and incur the "Secured Obligations" under the DIP Credit Agreement (as provided for and defined in the DIP Credit Agreement, the "DIP Obligations");

(b) authorizing the Debtors to execute and enter into the DIP Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable;

(c) authorizing the Debtors to use the proceeds of the DIP Facility as expressly provided in the DIP Documents:

i. finance the ongoing working capital needs of the Debtors and to otherwise fund the operations and administration of the Debtors during these chapter 11 cases, in accordance with the Approved Budget;

ii. make required adequate protection payments, solely as provided for in Paragraph 11 of the Interim Order and subject to and in accordance with the Approved Budget; and

iii. pay costs and expenses in connection with the DIP Documents and these chapter 11 cases, including, but not limited to, professional expenses, in accordance with the Approved Budget.

(d) authorizing the Debtors to grant, pursuant to 364(c)(1) of the Bankruptcy Code, allowed senior administrative expense claims against each Debtor, on a joint and several

basis, (the “DIP Superpriority Claims”), in respect of all DIP Obligations; provided, however, that the DIP Superpriority Claims shall be subject to the payment in full in cash of any amounts due (i) in respect of the TLA Superpriority Claims (as defined herein) and (ii) under the Carve-Out (as defined herein); provided, further that the DIP Superpriority Claims shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, including, subject to the entry of the Final Order, proceeds of avoidance actions under chapter 5 of the Bankruptcy Code, subject to the order of priorities set forth in the Interim Order;

(e) authorizing the Debtors to grant to the DIP Agent for the benefit of the DIP Parties, as security for the DIP Obligations, as contemplated by the DIP Documents and as set forth in the Interim Order, valid, perfected, and unavoidable security interests in and liens upon (such security interests and liens, collectively, the “DIP Liens”) the DIP Collateral (as defined in the Interim Order), having priority as follows:

i. pursuant to section 364(c)(2), valid, binding, continuing, enforceable, fully perfected liens upon and security interests in all of the Debtors’ right, title and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected unavoidable security interest or lien on the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code); provided, that the DIP Liens (other than in the Debtors’ unexpired real property leases and the proceeds thereof (the “Lease Collateral”)) shall be junior to the TLA Liens and the TLA Replacement Liens (as defined herein);

ii. subject to clause (iii) below, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected lien upon and security interest in all of the Debtors’ right, title and interest in, to and under all DIP Collateral which as of the Petition Date was encumbered by the Prepetition Liens, subject to the Carve-Out and junior only to the TLA Liens, the TLA Replacement Liens (other than in the Lease Collateral) and the Permitted Liens, and senior to any other lien upon, or security interest in, the DIP Collateral;

iii. pursuant to section 364(d) of the Bankruptcy Code, a valid, binding, continuing, enforceable, senior, priming, fully perfected lien upon and security interest in all of the Debtors’ right, title and interest in, to and under the DIP Collateral, (A) junior only to (i) the Carve-Out, (ii) the TLA Liens, (iii) the TLA Replacement Liens (other than in the Lease Collateral), (iv) the Permitted Liens and (v) a valid perfected unavoidable security interest or lien in existence as of the Petition Date or that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code and that is a Permitted Lien and expressly permitted in the DIP Credit Agreement to be senior to the DIP Liens granted to the DIP Agent and the DIP Lenders to secure the DIP Obligations, and (B) senior to any other lien upon, or security interest in, the DIP Collateral; and

iv. the DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, provided, however, that if the TLA Liens or TLA Replacement Liens are avoided (or are determined not to be valid, enforceable, or perfected), the

DIP Agent nonetheless shall be required to pay over to the TLA Agent amounts that the DIP Agent receives that the DIP Agent would otherwise have had to pay over to the TLA Agent had the TLA Liens and TLA Replacement Liens not been avoided (or determined to be invalid, unenforceable, or unperfected), (ii) except as expressly set forth in the Interim Order or in the DIP Documents, any lien or security interest heretofore or hereinafter granted in these chapter 11 cases (for the avoidance of doubt, excluding any lien or security interest heretofore or hereinafter granted to the TLA Agent or the TLA Lenders), including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors to the extent permitted by applicable non-bankruptcy law or (iii) any intercompany or affiliate liens of the Debtors.

(f) authorizing the DIP Parties, the TLA Agent and the TLA Lenders, on terms specified in the Interim Order and in the DIP Credit Agreement, to terminate the Debtors' rights under the Interim Order or the DIP Credit Agreement to use Cash Collateral, except to the extent such cash may be used for the Carve-Out, upon the occurrence and continuance of an Event of Default;

(g) authorizing, subject to entry of the Final Order, the Debtors to grant liens to the DIP Agent for the benefit of the DIP Parties on the proceeds of the Debtors' claims and causes of action arising 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 (collectively, the "Avoidance Actions");

(h) authorizing the Debtors' use, among other things, solely in accordance with the Approved Budget, of Cash Collateral in which the Prepetition Secured Parties may have an interest and the granting of adequate protection to the Prepetition Secured Parties, including with respect to any postpetition Diminution in Value (as defined in the Interim Order) of their interests in the Prepetition Collateral arising from, inter alia, the Debtors' use of the Cash Collateral and the priming of the liens of the Prepetition Secured Parties (other than the TLA Liens and TLA Replacement Liens) by the DIP Liens, solely as set forth in Section A "Use of Cash Collateral and Grant of Adequate Protection" below;

(i) authorizing an option by the TLA Agent and the TLA Lenders, at any time and in their sole and absolute discretion, to purchase from the DIP Lenders all (but not less than all) of the DIP Loan by giving written notice to the DIP Agent, which, once delivered, shall be irrevocable, and shall provide for the purchase of the DIP Loan (at par plus all accrued and unpaid interest and fees under the DIP Loan) by the TLA Agent and the TLA Lenders who elect to participate in such purchase pursuant to the terms set forth in the Interim Order;

(j) authorizing the DIP Agent (at the direction of the Required DIP Lenders) and each Prepetition Agent (subject to obtaining any required consents under the applicable Prepetition Credit Document) to "credit bid" up to the full allowed amount of its respective claims in connection with any sale of all or any portion of the DIP Collateral or Prepetition Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code;

(k) subject to and only effective upon the entry of a Final Order granting such relief, waiving any right of the Debtors to surcharge against the DIP Collateral or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(l) the Court's modification of the automatic stay imposed by section 362 of the Bankruptcy Code, to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order;

(m) the Court's waiver of any applicable stay as provided in the provisions of the Bankruptcy Rules (including under Bankruptcy Rule 6004), and providing for the immediate effectiveness of the Interim Order;

(n) scheduling a preliminary hearing on this Motion and the Court's authorization that, during the period commencing on the date of this Court's entry of the Interim Order and ending on the earlier of (a) the date this Court enters the Final Order, and (b) the occurrence of the Final Maturity Date, the Debtors may borrow from the DIP Lenders under the DIP Facility an aggregate principal amount equal to \$1,000,000, subject to compliance with the terms, conditions, and covenants contained in the DIP Documents and in accordance with the Approved Budget, and that the Debtors may utilize Cash Collateral on the terms set forth in the Interim Order; and

(o) scheduling the final hearing (the "Final Hearing") as soon as practicable, and within 28 days after the Petition Date, to consider entry of the Final Order granting the relief requested in this Motion on a final basis and authorizing the \$3,500,000 balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and DIP Documents, and approving the Debtors' notice with respect to the Motion.

**A. Use of Cash Collateral and Grant of Adequate Protection**

19. In order to finance their postpetition operations and effectuate a sale transaction, the Debtors require immediate use of Cash Collateral in which the Prepetition Secured Parties have an interest. The use of the Cash Collateral will provide the Debtors with the capital necessary to operate their businesses, pay their employees, and maintain the going concern value of their assets.

20. The use of Cash Collateral, in the ordinary course of business and in accordance with the Approved Budget, and the incurring of the DIP Obligations pursuant to the DIP Facility,

are subject to the terms and condition set forth in the Interim Order and the following adequate protection liens, superpriority claims, and payments.<sup>3</sup>

**a. TLA Replacement Liens**

21. The TLA Agent and the TLA Lenders will receive, solely to the extent of any Diminution of Value of the interest of the TLA Agent and the TLA Lenders in the TLA Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected postpetition replacement liens on and security interests in the DIP Collateral, which liens shall be (1) senior to the (v) liens in favor of the DIP Parties securing the DIP Obligations (other than with respect to the Lease Collateral, in which the liens in favor of the DIP Parties securing the DIP Obligations shall be senior to the TLA Liens and TLA Replacement Liens), (w) the TLB Liens and the TLB Replacement Liens (as defined herein), (x) the TLC Liens and the TLC Replacement Liens (as defined herein), (y) the TLD Liens and the TLD Replacement Liens (as defined herein) and (z) all other liens and security interests whatsoever in the DIP Collateral, and (2) junior and subject only to the Carve-Out and the liens in favor of the DIP Parties in the Lease Collateral (the “TLA Replacement Liens”).

**b. TLA Payments**

22. As further adequate protection, the TLA Agent and the TLA Lenders shall be entitled to (a) the payment of regularly scheduled cash interest, calculated at the non-default rate under the TLA Agreement, and (b) subject to the limitations set forth in the Interim Order, payment upon demand of all costs, expenses and other amounts payable under the terms of the TLA Loan Documents and all other reasonable out-of-pocket costs and expenses of the TLA Agent and TLA Lenders in accordance with the terms of the TLA Loan Documents (including,

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<sup>3</sup> For the avoidance of doubt, the relative priorities of the DIP Liens, the DIP Superpriority Claims, the Prepetition Lender Replacement Liens, the Prepetition Lender Superpriority Claims, and the Permitted Liens will be governed as set forth in detail in the proposed Interim Order.

without limitation, the reasonable prepetition and postpetition fees and out-of-pocket costs and expenses of one lead counsel (which shall be Klee, Tuchin, Bogdanoff & Stern LLP), one Delaware counsel (which shall be Richards, Layton & Finger PA) and any other necessary local or regulatory counsel in connection with advising the TLA Agent and TLA Lenders), subject to receiving a written invoice therefor, pursuant to the procedures and subject to the provisions set forth in paragraph 11(a)(ii) of the Interim Order.

**c. TLA Superpriority Claims**

23. The TLA Agent and the TLA Lenders will be granted, solely to the extent of any Diminution of Value of the interest of the TLA Agent and the TLA Lenders in the TLA Collateral from and after the Petition Date, allowed superpriority administrative expense claims (the “TLA Superpriority Claims”) pursuant to Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; provided that the TLA Superpriority Claims shall be subject to the payment in full in cash of the amounts due under the Carve-Out; provided, further that, for the avoidance of doubt, the TLA Superpriority Claims shall be paid in cash in full prior to any payment of the DIP Superpriority Claims and the TLB Superpriority Claims, as set forth in the Interim Order.

**d. TLA Access to Books and Records**

24. The TLA Agent and the TLA Lenders will be granted access to the Debtors’ books and records, delivery of such financial or any other reports as are provided to the DIP Agent contemporaneously with delivery of the same to the DIP Agent, and reasonable advance notice of, and an invitation to participate in, all meetings that include the DIP Lenders.

**e. TLB Replacement Liens**

25. The TLB Agent and the TLB Lenders will receive, solely to the extent of any Diminution of Value of the interest of the TLB Agent and the TLB Lenders in the TLB Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable

and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be (A) junior and subject to (x) the TLA Liens and the TLA Replacement Liens (on the same terms that the TLB Liens are subordinate and junior in priority to the TLA Liens as set forth in the Senior Intercreditor Agreement), (y) the liens in favor of the DIP Parties securing the DIP Obligations and (z) the Carve-Out and (B) senior to the TLC Liens, the TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens (the “TLB Replacement Liens”).

**f. TLB Payments**

26. As further adequate protection, the TLB Agent and the TLB Lenders shall be entitled to (a) payment of regularly scheduled paid-in-kind interest, calculated at the non-default rate under the TLB Agreement, and (b) subject to the limitations set forth in the Interim Order, payment upon demand of all costs, expenses and other amounts payable under the terms of the TLB Loan Documents and all other reasonable out-of-pocket costs and expenses of the TLB Agent and TLB Lenders in accordance with the terms of the TLB Loan Documents (including, without limitation, the reasonable prepetition and postpetition fees and out-of-pocket costs and expenses of one lead counsel (which shall be Strock & Strock & Lavan LLP), one Delaware counsel (which shall be Pachulski, Stang, Ziehl & Jones LLP) and any other necessary local or regulatory counsel in connection with advising the TLB Agent and TLB Lenders), subject to receiving a written invoice therefor, pursuant to the procedures and subject to the provisions set forth in paragraph 11(b)(ii) of the Interim Order.

**g. TLB Superpriority Claims**

27. The TLB Agent and the TLB Lenders will be granted, solely to the extent of any Diminution of Value of the interest of the TLB Agent and the TLB Lenders in the TLB Collateral from and after the Petition Date, allowed superpriority administrative expense claims

(the “TLB Superpriority Claims”) pursuant to Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; provided that the TLB Superpriority Claims shall be subject to the payment in full in cash of the amounts due under (x) the TLA Superpriority Claims, (y) the DIP Superpriority Claims, and (z) the Carve-Out, as set forth in the Interim Order.

**h. TLB Access to Books and Records**

28. The TLB Agent and the TLB Lenders will be granted access to the Debtors’ books and records and such financial reports as are provided to the DIP Agent.

**i. TLC Replacement Liens**

29. The TLC Agent and the TLC Lenders will receive, solely to the extent of any Diminution of Value of the interest of the TLC Agent and the TLC Lenders in the TLC Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be junior and subject to (w) the TLA Liens and the TLA Replacement Liens, (x) the liens in favor of the DIP Parties securing the DIP Obligations, (y) the TLB Liens and the TLB Replacement Liens and (z) the Carve-Out (the “TLC Replacement Liens”), in each case on the same terms that the TLC Liens and the TLD Liens are subordinate and junior in priority to the TLA Liens and the TLB Liens as set forth in the Junior Intercreditor Agreement and the TLC Liens are subordinate and junior in priority under the Intercreditor Agreement between the TLC Agent and the TLD Agent.

**j. TLC Superpriority Claims**

30. The TLC Agent and the TLC Lenders will be granted, solely to the extent of any Diminution of Value of the interest of the TLC Agent and the TLC Lenders in the TLC Collateral from and after the Petition Date, allowed superpriority administrative expense claims

(the “TLC Superpriority Claims”) pursuant to Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; provided that the TLC Superpriority Claims shall be subject to the payment in full in cash of the amounts due under (w) the TLA Superpriority Claims, (x) the DIP Superpriority Claims, (y) the TLB Superpriority Claims and (z) the Carve-Out, as set forth in the Interim Order.

**k. TLD Replacement Liens**

31. The TLD Agent and the TLD Lenders will receive, solely to the extent of any Diminution of Value of the interest of the TLD Agent and the TLD Lenders in the TLD Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be junior and subject to (v) the TLA Liens and the TLA Replacement Liens, (w) the liens in favor of the DIP Parties securing the DIP Obligations, (x) the TLB Liens and the TLB Replacement Liens, (y) the TLC Liens and the TLC Replacement Liens and (z) the Carve-Out (the “TLD Replacement Liens” and, together with the TLA Replacement Liens, the TLB Replacement Liens and the TLC Replacement Liens, the “Prepetition Lender Replacement Liens”), in each case on the same terms that the TLC Liens and the TLD Liens are subordinate and junior in priority to the TLA Liens and the TLB Liens as set forth in the Junior Intercreditor Agreement).

**l. TLD Superpriority Claims**

32. The TLD Agent and the TLD Lenders will be granted, solely to the extent of any Diminution of Value of the interest of the TLD Agent and the TLD Lenders in the TLD Collateral from and after the Petition Date, allowed superpriority administrative expense claims (the “TLD Superpriority Claims” and, together with the TLA Superpriority Claims, the TLB

Superpriority Claims and the TLC Superpriority Claims, the “Prepetition Lender Superpriority Claims”) pursuant to Sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; provided that the TLD Superpriority Claims shall be subject to the payment in full in cash of the amounts due under (v) the TLA Superpriority Claims, (w) the DIP Superpriority Claims, (x) the TLB Superpriority Claims, (y) the TLC Superpriority Claims and (z) the Carve-Out, as set forth in the Interim Order

**B. Terms of the DIP Facility<sup>4</sup>**

33. The following chart contains a summary of the essential terms of the proposed DIP Facility, in accordance with Bankruptcy Rule 4001(b)(1)(B) and (c)(1)(B) and Local Rule 4001-2:

<b>TERM / RULE</b>	<b>DESCRIPTION AND LOCATION OF TERM</b>
<b>Debtors/Borrowers</b> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)</i>	Company as borrower and each of the other Debtors, as guarantors. (See pg. 1 of the DIP Credit Agreement; pg. 1–2 of the Interim Order.)
<b>DIP Agent</b> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)</i>	Cortland Capital Market Services LLC, as administrative agent and collateral agent for the DIP Lenders. (See pg. 1 of the DIP Credit Agreement; pg. 2 of the Interim Order.)
<b>DIP Lenders</b> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)</i>	Certain “Lenders” under the TLB Agreement and each of their successors and assigns, as further described in the DIP Credit Agreement. (See pg. 1, 10 of the DIP Credit Agreement.)
<b>DIP Facility</b> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)</i>	The proposed DIP Facility consists of:  A credit facility in the form of term loans in an aggregate principal amount not to exceed \$3,500,000, that, once borrowed and repaid, may not be reborrowed; <u>provided</u> that at the written request of the Company, the DIP

<sup>4</sup> This section is qualified in its entirety by the provisions of the DIP Credit Agreement and the Interim Order.

<p><i>Del. Bankr. L.R.</i> 4001-2(a)(ii)</p> <p><i>Del. Bankr. L.R.</i> 4001-2(a)(i)(E)</p>	<p>Lenders may choose to increase the aggregate DIP Loan Commitments in an additional amount (i) in their sole discretion, not to exceed \$500,000 in the aggregate together with any outstanding Collateral Agent Advance provided under Section 10.08(a) of the DIP Credit Agreement, (ii) in their discretion, with the consent of the TLA Lenders, not to exceed \$4,500,000 in the aggregate and (iii) in their sole discretion, that is required solely for purposes of making any adequate protection payments to the TLA Lenders as required pursuant to the applicable Order.</p> <p>(See p. 1; § 2.01 of the DIP Credit Agreement; pg. 2 of the Interim Order.)</p>
<p><b>Borrowing Limit on Interim Basis</b></p> <p><i>Fed. R. Bankr. P.</i> 4001(c)(1)(B)</p> <p><i>Del. Bankr. L.R.</i> 4001-2(a)(ii)</p>	<p>Pursuant to the Interim Order, the Debtors may borrow under the DIP Facility in an aggregate amount equal to \$1,000,000, subject to the terms and conditions set forth in the DIP Documents and the Interim Order.</p> <p>(See ¶ 4 of the Interim Order.)</p>
<p><b>Use of DIP Facility and Cash Collateral</b></p> <p><i>Fed. R. Bankr. P.</i> 4001(c)(1)(B)</p> <p><i>Fed. R. Bankr. P.</i> 4001(b)(1)(B)(ii) and (iii)</p> <p><i>Del. Bankr. L.R.</i> 4001-2(a)(ii)</p>	<p>The DIP Facility and Cash Collateral will be used in accordance with the Approved Budget and as expressly provided in the DIP Documents and the Interim Order:</p> <ol style="list-style-type: none"> <li>i. to provide financing for working capital and for other general corporate purposes of the Debtors;</li> <li>ii. to make certain adequate protection payments to Prepetition Secured Parties; and</li> <li>iii. to pay administration costs of these chapter 11 cases and claims or amounts approved by this Court.</li> </ol> <p>(See § 7.02(f) of the DIP Credit Agreement; ¶¶ H, 5–7 of the Interim Order.)</p>
<p><b>Additional Limitations on Use of Proceeds from DIP Facility, Cash Collateral and Carve-Out</b></p> <p><i>Fed. R. Bankr. P.</i> 4001(c)(1)(B)</p> <p><i>Del. Bankr. L.R.</i> 4001-2(a)(ii)</p>	<p>Without the prior written consent, as applicable, of the DIP Parties or the Prepetition Secured Parties, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral or the Carve-Out may be used for any fees, costs or expenses incurred by any party (including the Debtor and any Committee) in connection with any of the following:</p> <ol style="list-style-type: none"> <li>i. challenge or investigate the validity, perfection, priority, extent, or enforceability of any rights or obligations arising under or related to the DIP Documents, the Prepetition Credit Agreements, or the liens or security interest securing the obligations under the foregoing or to pursue any causes of action of any kind, including a Loan Party Claim (as defined herein), against the DIP Parties or the Prepetition Secured Parties; <u>provided, however</u>, that, if a Committee is appointed, not more than \$50,000 of the proceeds of the DIP Facility or any proceeds of the DIP Collateral or the Cash Collateral may be used by such Committee for purposes of investigating any Loan Party Claim;</li> </ol>

	<ul style="list-style-type: none"> <li>ii. assert any claim or cause of action against the DIP Parties or the Prepetition Secured Parties;</li> <li>iii. seek to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Parties or the Prepetition Secured Parties under the DIP Documents, the TLA Loan Documents, the TLB Loan Documents or the Interim Order;</li> <li>iv. the payment of any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by the TLA Agent, the TLB Agent and an order of the Bankruptcy Court and (y) in accordance with the DIP Credit Agreement; or</li> <li>v. any purpose that is prohibited under the Bankruptcy Code.</li> </ul> <p>“<u>Loan Party Claim</u>” means any claim, cause of action, adversary proceeding, or other litigation against any of the DIP Parties or Prepetition Secured Parties and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof.</p> <p>(See ¶ 14 of the Interim Order.)</p>
<p><b>Fees</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>The Borrower will pay the reasonable out-of-pocket cost of all visits, audits, inspections, appraisals and valuations conducted by a third party on behalf of the DIP Agents or the Required DIP Lenders. The foregoing notwithstanding, so long as no Event of Default has occurred and is continuing, the Company will not be required to pay for more than one such visit, audit or inspection during any Fiscal Year.</p> <p>(See § 2.06 of the DIP Credit Agreement.)</p>
<p><b>Interest Rates</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L. R. 4001-2(a)(ii)</i></p>	<p>The DIP Loans will bear interest on the principal amount outstanding from time to time, from the date of each advance until repaid, at a rate of 15.5% per annum, payable in kind.</p> <p>Upon the occurrence and during the continuance of an Event of Default, the DIP Loans will bear interest at the Post-Default Rate, which shall equal the rate of interest in effect pursuant to the DIP Credit Agreement plus 2.00%. Interest at the Post-Default Rate (in excess of the rate of interest that would have otherwise been applicable) shall be due and payable in cash.</p> <p>(See § 2.04 of the DIP Credit Agreement.)</p>
<p><b>Maturity</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>All DIP Obligations under the DIP Facility, accrued or otherwise, shall be due and payable in full on the earliest of:</p> <ul style="list-style-type: none"> <li>i. the Stated Maturity Date (i.e., the date that is one year after the date on which the Interim Order is entered);</li> <li>ii. the date of consummation of any Section 363 Sale;</li> </ul>

	<p>iii. if the Final Order has not been entered, the date that is thirty (30) calendar days after the Petition Date;</p> <p>iv. the Plan Effective Date; and</p> <p>v. the date of the acceleration of the DIP Obligations in accordance with the terms set forth in the DIP Credit Agreement.</p> <p>(See § 2.03 of the DIP Credit Agreement.)</p>
<p><b>Prepayments</b></p>	<p>The Company may not voluntarily prepay the principal of the DIP Loan, in whole or in part, without the prior written consent of the Required DIP Lenders and the TLA Lenders provided that, in the event of a 100% refinancing of the DIP Loan Obligations, such consent shall only be required from the Required DIP Lenders (in which case, prior notice shall be sent to the DIP Agent at least one business day prior to such prepayment).</p> <p>Mandatory prepayments of the DIP Loans shall be required (i) if the Debtors incur Indebtedness, other than Permitted Indebtedness, (ii) upon receipt by the Debtors of Extraordinary Receipts, and (iii) upon Disposition of property other than Permitted Dispositions, in the full amount of the net cash proceeds received in connection with such Indebtedness, Extraordinary Receipts or Disposition, as the case may be, in each case as outlined in the DIP Credit Agreement, subject to baskets and reinvestment provisions as further outlined in the DIP Credit Agreement. With limited exceptions the TLA Obligations must be paid before the DIP Obligations are paid.</p> <p>(See § 2.05 of the DIP Credit Agreement.)</p>
<p><b>Collateral</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(i)(D)</i></p>	<p>The DIP Facility will be secured by a valid, perfected, senior, priming lien, granted by the Debtors and approved by the Bankruptcy Court pursuant to section 364(c) and 364(d) of the Bankruptcy Code, in all present and after-acquired assets of the Debtors, including all property of their respective estates in these chapter 11 cases, whether real or personal, tangible or intangible, now owned or hereafter acquired, and all proceeds, profits, rents, accessions and substitutes thereof, subject to the TLA Liens, the TLA Replacement Liens (other than in the Lease Collateral), the Permitted Liens and the Carve-Out, and all as provided in the Interim Order and the Final Order.</p> <p>The DIP Liens on DIP Collateral that is not otherwise encumbered by a valid, perfected, unavoidable security interest on the Petition Date will be subject only to the Carve-Out and the TLA Replacement Liens (other than in the Lease Collateral).</p> <p>The DIP Liens on DIP Collateral encumbered by Prepetition Liens on the Petition Date, will be subject only to the Carve-Out, the TLA Liens, the TLA Replacement Liens (other than in the Lease Collateral) and the Permitted Liens.</p> <p>Upon entry of a Final Order, the DIP Liens will also extend to the proceeds of any Avoidance Action.</p> <p>(See pg. 3; ¶ 10 of the Interim Order.)</p>

<p><b>Priority and Liens; Carve-Out</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(i)(F)</i></p>	<p>All DIP Obligations of the Debtors under the DIP Facility at all times shall constitute allowed superpriority administrative expense claims in these chapter 11 cases, having priority over all administrative expenses of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c) and 726, subject only to the TLA Superpriority Claim and the Carve-Out. The term “<u>Carve-Out</u>” shall mean, to the extent unencumbered funds are not immediately available on the date of delivery of a Carve-Out Trigger Notice (as defined below) to pay administrative expenses in full, proceeds of DIP Collateral to pay the following expenses:</p> <ol style="list-style-type: none"> <li>i. to the extent allowed by the Bankruptcy Court at any time, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors or the Committee (if any) (collectively, the “<u>Professionals</u>”) at any time before or on the date of delivery by the DIP Agent (at the direction of the Required DIP Lenders) or the TLA Agent of a Carve-Out Trigger Notice (as defined below) up to an amount not to exceed the amount of such fees, disbursements, costs and expenses for each Professional (on a professional-by-professional, and not an aggregate basis) in the Approved Budget for the period prior to delivery of the Carve-Out Trigger Notice, whether such amounts are allowed by the Bankruptcy Court prior to or after delivery of such Carve-Out Trigger Notice (and including amounts incurred but not invoiced prior to the delivery of the Carve-Out Trigger Notice); provided, that, there shall be a dollar-for-dollar reduction of the Carve-Out for any unused retainers held by or on behalf of the Professionals as of the delivery of the Carve-Out Trigger Notice ;</li> <li>ii. all unpaid fees, disbursements, costs and expenses incurred by the Professionals on or after the day following the delivery by the DIP Agent (at the direction of the Required DIP Lenders) or the TLA Agent of the Carve-Out Trigger Notice up to an amount not to exceed the amount of such fees, disbursements, costs and expenses for each Professional (on a professional-by-professional, and not an aggregate basis) in the Approved Budget for the relevant time period following the delivery of the Carve-Out Trigger Notice, to the extent allowed by the Bankruptcy Court at any time, in an aggregate amount not to exceed \$100,000; and</li> <li>iii. the payment of fees and expenses pursuant to 28 U.S.C. § 1930 plus interest pursuant to 31 U.S.C. § 3717.</li> </ol> <p>The Carve-Out and any DIP Loans may not be used to investigate or challenge the validity, perfection, priority, extent, or enforceability of the DIP Facility or the indebtedness under the Prepetition Credit Agreements, or the liens or security interests securing the DIP Facility or the indebtedness under the Prepetition Credit Agreements, or assert any claims against the lenders or agents under the Prepetition Credit Agreements; <u>provided, however,</u> that no more than \$50,000 of the proceeds of the DIP Facility or any proceeds of the DIP Collateral or the Cash Collateral may be used by the Committee (if any) for purposes of investigating any Loan Party Claim.</p>
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	<p>The Carve-Out will be paid from the following sources in the following order: first, from the Debtors' unencumbered funds; second, from proceeds of the DIP Collateral that do not constitute TLA Collateral; and, third, from proceeds of the TLA Collateral.</p> <p>"<u>Carve-Out Trigger Notice</u>" means a written notice provided by the DIP Agent (at the direction of the Required DIP Lenders and with the prior written consent of the TLA Agent) or the TLA Agent (upon the occurrence of a TLA Event of Default), to the Debtors, the TLA Agent (if not delivering the Carve-Out Trigger Notice), the DIP Agent (if not delivering the Carve-Out Trigger Notice), the U.S. Trustee and any Committee that the Carve-Out is invoked, which notice can be delivered only when the DIP Agent is entitled to exercise remedies under the DIP Facility due to the occurrence of an Event of Default and the Final Maturity Date has occurred.</p> <p>(See § 6.01 of the DIP Credit Agreement; ¶¶ 9, 13 of the Interim Order.)</p>
<p><b>Adequate Protection</b></p> <p><i>Fed. R. Bankr. P. 4001(b)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p><b><u>Replacement Liens</u></b></p> <p>1. The TLA Agent, for itself and for the benefit of the TLA Lenders shall be granted, solely to the extent of any Diminution of Value of the interest of the TLA Agent and the TLA Lenders in the TLA Collateral from and after the Petition Date, valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral, which liens shall:</p> <ol style="list-style-type: none"> <li>i. be subject and subordinate to the Carve-Out and the liens in favor of the DIP Parties in the Lease Collateral; and</li> <li>ii. otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral, including the DIP Liens, the TLB Liens, the TLB Replacement Liens, the TLC Liens, the TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens.</li> </ol> <p>2. The TLB Agent, for itself and for the benefit of the TLB Lenders shall be granted, solely to the extent of any Diminution of Value of the interest of the TLB Agent and the TLB Lenders in the TLB Collateral from and after the Petition Date, valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral, which liens shall:</p> <ol style="list-style-type: none"> <li>i. be subject and subordinate to the Carve-Out, the TLA Liens, the TLA Replacement Liens and the DIP Liens; and</li> <li>ii. otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral, including the TLC Liens, TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens.</li> </ol> <p>3. The TLC Agent, for itself and for the benefit of the TLC Lenders shall be granted, solely to the extent of any Diminution of Value of the interest of the TLC Agent and the TLC Lenders in the TLC Collateral from and after the Petition Date, valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral, which liens shall:</p> <ol style="list-style-type: none"> <li>i. be subject and subordinate to the Carve-Out, the TLA Liens, the TLA Replacement Liens, the DIP Liens, the TLB Liens and the TLB</li> </ol>

	<p>Replacement Liens; and</p> <p>ii. otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral, including the TLD Liens and the TLD Replacement Liens.</p> <p>4. The TLD Agent, for itself and for the benefit of the TLD Lenders shall be granted, solely to the extent of any Diminution of Value of the interest of the TLD Agent and the TLD Lenders in the TLD Collateral from and after the Petition Date, valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral, which liens shall:</p> <p>i. be subject and subordinate to the Carve-Out, the TLA Liens, the TLA Replacement Liens, the DIP Liens, the TLB Liens, the TLB Replacement Liens, the TLC Liens and the TLC Replacement Liens; and</p> <p>ii. otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.</p> <p><b><u>Payments of Interest and Fees</u></b></p> <p>As further adequate protection, the TLA Agent and the TLA Lenders shall receive:</p> <p>i. Payment of regularly scheduled cash interest, calculated at the non-default rate under the TLA Agreement; and</p> <p>ii. Payment of reasonable fees, costs and expenses, as set forth in the TLA Loan documents, including reasonable fees, costs and expenses of one lead counsel and one Delaware counsel.</p> <p>As further adequate protection, the TLB Agent and the TLB Lenders shall receive:</p> <p>i. Payment of regularly scheduled payment-in-kind interest calculated at the non-default rate under the TLB Agreement; and</p> <p>ii. Payment of reasonable fees, costs and expenses, as set forth in the TLB Loan Documents, including reasonable fees, costs and expenses of one lead counsel and one Delaware counsel.</p> <p><b><u>Superpriority Claims</u></b></p> <p>To the extent of any postpetition Diminution of Value of the TLA Agent's or the TLA Lenders' interest in the collateral that secures the TLA Obligations (if any), the TLA Agent, and the TLA Lenders shall be granted, solely to the extent of such Diminution of Value, and subject to the Carve-Out, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 364(c)(1),</p>
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	<p>503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.</p> <p>To the extent of any postpetition Diminution of Value of the TLB Agent's or the TLB Lenders' interest in the collateral that secures the TLB Obligations (if any), the TLB Agent and the TLB Lenders shall be granted, solely to the extent of such Diminution of Value, and subject to the Carve-Out, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.</p> <p>To the extent of any postpetition Diminution of Value of the TLC Agent's or the TLC Lenders' interest in the collateral that secures the TLC Obligations (if any), the TLC Agent and the TLC Lenders shall be granted, solely to the extent of such Diminution of Value, and subject to the Carve-Out, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.</p> <p>To the extent of any postpetition Diminution of Value of the TLD Agent's or the TLD Lenders' interest in the collateral that secures the TLD Obligations (if any), the TLD Agent and the TLD Lenders shall be granted, solely to the extent of such Diminution of Value, and subject to the Carve-Out, an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the</p>
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	<p>Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.</p> <p>The TLA, TLB, TLC and TLD Superpriority Claims shall be subject to the following relative priorities:</p> <p>(a) the TLA Superpriority Claim shall be senior in priority to the DIP Superpriority Claim, the TLB Superpriority Claim, the TLC Superpriority Claim and the TLD Superpriority Claim;</p> <p>(b) the DIP Superpriority Claim shall be (i) junior in priority to the TLA Superpriority Claim and (ii) senior in priority to the TLB Superpriority Claim, the TLC Superpriority Claim and the TLD Superpriority Claim;</p> <p>(c) the TLB Superpriority Claim shall be junior in priority to the TLA Superpriority Claim and the DIP Superpriority Claim and (ii) senior in priority to the TLC Superpriority Claim and the TLD Superpriority Claim; and</p> <p>(d) the TLC Superpriority claim shall be junior in priority to the TLA Superpriority Claim, the DIP Superpriority Claim and the TLB Superpriority Claim and (ii) senior in priority to the TLD Superpriority Claim; and</p> <p>(e) the TLD Superpriority claim shall be junior in priority to the TLA Superpriority Claim, the DIP Superpriority Claim, the TLB Superpriority and the TLC Superpriority Claim.</p> <p>(See ¶ 11 of the Interim Order.)</p>
<p><b>Conditions to Closing</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The conditions precedent to the Closing Date include the usual and customary conditions for financings of this type, including, among other things, delivery of financing documentation, payment of fees and expenses, governmental and third-party approvals, the receipt by the DIP Agent and the DIP Lenders of a copy of the Initial Budget, which shall be in form and substance satisfactory to, among others, the DIP Agent at the direction of the Required DIP Lenders, the entry of the Interim Order, which shall not be stayed, reversed, vacated or amended, receipt by the DIP Lenders of all first day motions, which must be acceptable to, among others, the DIP Agent at the direction of the Required DIP Lenders. The DIP Commitments shall terminate if the Closing Date has not occurred by 5:00 p.m., New York time, on October 6, 2016, or upon the occurrence of a Change of Control, if earlier.</p> <p>The conditions precedent to all borrowings include customary notice of borrowing, no default or event of default under the DIP Facility, accuracy of representations and warranties in all material respects, compliance with the Approved Budget, and entry of the applicable Orders, which shall not be stayed, reversed, vacated or amended.</p> <p>These conditions are set out fully in Article V of the DIP Credit Agreement.</p> <p>(See § 2.03(f) and Article V of the DIP Credit Agreement.)</p>
<p><b>Representations and</b></p>	<p>Customary and appropriate representations and warranties for debtor in possession financings, including, without limitation, representations and</p>

<b>Warranties</b>	warranties that all necessary court authorizations are in full force and effect and shall not have been vacated, stayed, reversed, modified or amended, and other representations and warranties, as provided for in Article VI of the DIP Credit Agreement.  (See Article VI of the DIP Credit Agreement.)
<b>Affirmative Covenants</b>	Affirmative and reporting covenants will be in substantially the same form as exists under the TLB Agreement and such additional affirmative covenants as are customary and appropriate for a debtor in possession financing, including, without limitation, delivery to the DIP Agent and each DIP Lender on a weekly basis a report setting forth the actual cash flows for the immediately preceding calendar week with respect to each line item in the Approved Budget and an update to the Approved Budget then in effect, in form and substance satisfactory to, among others, the Required DIP Lenders, for the subsequent 13-week period.  (See § 7.01 of the DIP Credit Agreement.)
<b>Negative Covenants</b>	Customary and appropriate negative covenants for debtor in possession financings, including, without limitation, restrictions on liens, indebtedness, consolidation or merger, dispositions, affiliate transactions, use of proceeds, dividends and distributions and other restricted payments, investments, sale and leaseback, changes in nature of the business, and amendments to governing documents, modification of indebtedness and changes to the Orders without required consent.  (See § 7.02 of the DIP Credit Agreement.)
<b>Financial Covenants</b>	Debtors shall not, with respect to the Test Period (as defined herein) ending on each Test Date (as defined herein), without the consent of the Required DIP Lenders:  (i) make disbursements that would be included in any disbursement line item (a “ <u>Disbursements Line</u> ”) in the Approved Budget during such Test Period in an aggregate amount which would exceed by more than fifteen percent (15.0%) the aggregate amount of disbursements budgeted in such Disbursements Line in the Approved Budget for such Test Period; and  (ii) permit receipts that would be included in the aggregate “Total Receipts” line-item in the Approved Budget (a “ <u>Receipts Line</u> ”) during such Test Period to be in an aggregate amount less than eighty-five percent (85.0%) of receipts budgeted in such Receipts Line in the Approved Budget for such Test Period.  The Debtors shall not, on any Test Date, permit the Minimum Liquidity (as defined herein) to be less than \$100,000.  “ <u>Test Date</u> ” means the second Sunday of each two week period commencing with the second full week after the Closing Date (which such first “Test Date,” for the avoidance of doubt, shall be October 23, 2016).  “ <u>Test Period</u> ” means, with respect to each Test Date, the cumulative period commencing on the Petition Date and ending on such Test Date.

	<p>“<b>Minimum Liquidity</b>” means the sum of (i) all cash amounts on deposit in Existing Blocked Accounts of the Loan Parties and (ii) all pending deposits that are to be credited to such Existing Blocked Accounts minus the sum of (x) the aggregate amount of outstanding un-cashed checks (other than checks with respect to payroll payments) that are to be drawn on such Existing Blocked Accounts and (y) un-cashed checks with respect to payroll payments that are to be drawn on such Existing Blocked Accounts which have been outstanding for more than one (1) week.</p> <p>(See § 7.02(t)–(u) of the DIP Credit Agreement.)</p>
<p><b>Budget</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The Initial Budget (attached as Exhibit D to the DIP Credit Agreement) shall be prepared and delivered by the Debtors on or prior to the Closing Date and shall set forth all cumulative and line-item cash receipts and expenditures on a weekly basis for the period beginning as of the week of the Closing Date through and including the 13th week after the Closing Date, broken down by week, including the anticipated weekly uses of the proceeds of the DIP Facility and the Cash Collateral for such period, and shall be updated each week pursuant to Section 7.01(a)(xxii) of the DIP Credit Agreement (such budget, as so updated and approved, the “<b>Approved Budget</b>”).</p> <p>(See §§ 5.01; 7.01; and Exhibit D of the DIP Credit Agreement; ¶ 6 of the Interim Order)</p>
<p><b>Events of Default</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The DIP Credit Agreement sets forth customary and appropriate events of default for debtor in possession financings, including, without limitation, the following:</p> <ol style="list-style-type: none"> <li>i. non-payment of principal, interest and fees when due,</li> <li>ii. failure to perform or comply with affirmative, negative and financial covenants,</li> <li>iii. breaches of representations and warranties,</li> <li>iv. default as to other indebtedness,</li> <li>v. invalidity or impairment of documents,</li> <li>vi. judgments, change of control, or ERISA events,</li> <li>vii. failure of guaranty or lack of security interest,</li> <li>viii. dismissal or conversion of these chapter 11 cases or appointment of a chapter 11 trustee or an examiner or similar insolvency official or administrator with expanded powers,</li> <li>ix. cessation of the DIP Obligations as superpriority claims,</li> <li>x. the failure of the Debtors to obtain the Final Order within 28 days (or such other period as the Required DIP Lenders and the TLA Agent may agree to in writing) following the Interim Hearing,</li> <li>xi. entry of an order amending, supplementing, staying, vacating or otherwise modifying any DIP Loan Document or any Order, in any case, without consent of, among others, the Required DIP Lenders,</li> <li>xii. filing of a motion by any Debtor requesting or seeking authority to</li> </ol>

	<p>take any action or actions adverse to rights and remedies of the DIP Agents and the DIP Lenders under the DIP Credit Agreement or their interest in the DIP Collateral.</p> <p>xiii. non-compliance with the Interim Order or the Final Order,</p> <p>xiv. payment of a prepetition claim without the consent of the Required DIP Lenders, other than as set forth in any first day order or as set forth in the Approved Budget,</p> <p>xv. sale of all or substantially all any Debtor’s assets outside the ordinary course of business without the consent of, among others, the DIP Agent and the Required DIP Lenders, and</p> <p>xvi. filing or court approval of any plan of reorganization that does not provide for the repayment of all DIP Obligations and all TLA Obligations or such other treatment of the DIP Obligations and TLA Obligations in a manner acceptable to the Required DIP Lenders and the TLA Agent, as applicable.</p> <p>(See Article IX of the DIP Credit Agreement.)</p>
<p><b>Amendments</b></p>	<p>Amendments and waivers of any provision of any DIP Document will require the approval of the DIP Agent or the Required DIP Lenders, and, in certain instances, the TLA Agent and the TLA Lenders, as applicable, provided that no amendment or waiver shall (as described further in the DIP Credit Agreement):</p> <p>i. increase the DIP Loan Commitment of any DIP Lender, reduce the principal of, or interest on, the DIP Loan payable to any DIP Lender, reduce the amount of any fee payable for the account of any DIP Lender, or postpone or extend any scheduled date fixed for any payment (but not any prepayment) of principal of, or interest or fees on, the DIP Loan payable to any DIP Lender, in each case, without the written consent of such DIP Lender;</p> <p>ii. change the percentage of the DIP Loan Commitments or of the aggregate unpaid principal amount of the DIP Loan that is required for the DIP Lenders or any of them to take any action under the DIP Credit Agreement without the written consent of each DIP Lender directly affected thereby;</p> <p>iii. amend the definition of “Required DIP Lenders” or “Pro Rata Share” without the written consent of each DIP Lender;</p> <p>iv. release all or a substantial portion of the DIP Collateral (except as otherwise provided in the Orders and the DIP Documents), subordinate any Lien granted in favor of the DIP Agent for the benefit of the DIP Agents and the DIP Lenders, or release the Company or all or substantially all of the Guarantors, in each case, without the written consent of each DIP Lender; or</p> <p>v. amend, modify or waive Section 4.03 or Section 12.02 of the DIP Credit Agreement without the written consent of each DIP Lender.</p> <p>(A) No term (including any defined term) or provision under the DIP Loan</p>

	<p>Documents the breach of which would constitute a TLA Event of Default, may be amended or otherwise modified (including by waiver or consent), by any DIP Agent, any of the DIP Lenders and/or any of the Debtors, in each case under this clause (A) without the prior written consent of the TLA Agent and the TLA Lenders, and (B) none of the DIP Agents or the DIP Lenders may forbear with respect to, or waive (including by consent), any TLA Event of Default or any term (including any defined term) or provision which if breached would constitute a TLA Event of Default, in each case, under this clause (B), without the prior written consent of the TLA Agent and the TLA Lenders</p> <p>Any material modification or amendment to any DIP Document shall only be permitted pursuant to an order of the Court, <u>provided</u> that any forbearance from, or waiver of (a) a Debtor’s breach of a covenant, representation or any other agreement under any DIP Document or (b) a default or Event of Default under any DIP Document shall not require an order of the Court.</p> <p>(See § 12.02 of the DIP Credit Agreement; ¶ 32 of the Interim Order.)</p>
<p><b>Payment of DIP Parties’ Professional Fees</b></p>	<p>The Debtors will pay on a current basis all reasonable and documented costs, fees and out of pocket expenses of the DIP Agent and the DIP Lenders, in accordance with the DIP Documents, including, without limitation, the reasonable prepetition and postpetition fees, costs, and expenses of one lead counsel and one Delaware counsel, and any other necessary local or regulatory counsel in connection with advising the DIP Parties; <u>provided, however,</u> that any fees, costs and expenses of the DIP Agent and the DIP Lenders (including professional fees) in excess of the Approved Budget will be paid-in-kind and added to the DIP Obligations.</p> <p>(See § 12.04 of the DIP Credit Agreement; ¶ 7 of the Interim Order.)</p>
<p><b>Waivers</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(i)(H)</i></p>	<p>The Orders shall provide customary waivers, including the waiver of the automatic stay in connection with the DIP Agent’s and DIP Lenders’ enforcement of remedies upon an event of default under the DIP Facility, the TLA Agent’s and TLA Lenders’ (or any of their respective agents) enforcement of remedies upon a TLA Event of Default, the waiver of any surcharge of costs or expenses under section 506(c) of the Bankruptcy Code (subject to the entry of a final order), the waiver of any right to marshalling, and the waiver of the “equities of the case” exception under section 552(b) of the Bankruptcy Code (subject to the entry of a final order).</p> <p>(See ¶¶ 17, 19, 27 of the Interim Order.)</p>
<p><b>Stipulations etc.</b></p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>Pursuant to the Orders, the Debtors shall provide customary stipulations as to the validity and priority of the DIP Facility, the DIP Obligations, the Prepetition Credit Documents and the Prepetition Secured Obligations, it being understood that such stipulations shall be subject to a customary period after the Petition Date in which the Committee (if any) shall have standing to commence an appropriate contested matter or adversary proceeding (a “<u>Challenge</u>”) asserting any Loan Party Claim, as set forth in the Interim Order. Notwithstanding the foregoing, subject to entry of a Final Order, from and after consummation of any sale transaction pursuant to section 363 of the Bankruptcy Code, no person or entity, including the</p>

	<p>Committee (if any), any chapter 11 trustee appointed in these Chapter 11 Cases or any chapter 7 trustee in any chapter 7 case of the Debtors, shall be entitled to commence any Challenge asserting any Loan Party Claim.</p> <p>If no such Challenge is timely commenced, then:</p> <ol style="list-style-type: none"> <li>i. the agreements, acknowledgements and stipulations contained in Paragraph C of the Interim Order shall be irrevocably binding on the Debtors, any Committee, all creditors of the Debtors and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, including any chapter 11 trustee or chapter 7 trustee appointed in these chapter 11 cases or any subsequent chapter 7 cases, without further action by any party or the Bankruptcy Court, and each of the foregoing parties and any and all successors-in-interest shall thereafter be forever barred from bringing any Challenge with respect thereto;</li> <li>ii. the Prepetition Liens of the Prepetition Secured Parties shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law;</li> <li>iii. the obligations under the Prepetition Credit Agreements shall be deemed to be finally allowed claims for all purposes against each of the Debtors, including in any subsequent chapter 7 cases, in the amounts set forth in Paragraph C of the Interim Order, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and</li> <li>iv. subject to entry of the Final Order, the Debtors shall be deemed to have released, waived and discharged the Prepetition Secured Parties (whether in their prepetition or postpetition capacity), together with each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors members, managers, shareholders, and employees, past present and future, and their respective heirs, predecessors, successors and assigns from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Secured Obligations.</li> </ol> <p>If any such Challenge is timely commenced, the stipulations contained in Paragraph C of the Interim Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge in connection therewith and then only with respect to the stipulations that are subject to the Challenge and not to any stipulations not subject to the Challenge) except to the extent that such stipulations are successfully challenged in such Challenge.</p> <p>(See ¶ 15 of the Interim Order.)</p>
<p><b>Release</b> <i>Fed. R. Bankr. P.</i> <i>4001(c)(1)(B)</i></p>	<p>Subject to entry of the Final Order, the Debtors shall forever, unconditionally and irrevocably release, discharge and acquit the DIP Agent, the DIP Lenders, the TLA Agent, the TLA Lenders, the TLB Agent, the</p>

	<p>TLB Lenders, Sun Garden Fresh Finance, LLC (solely in its capacity as a TLC Lender) and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the “<u>Releasees</u>”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys’ fees), debts, liens, actions and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to the DIP Facility or the DIP Documents, the TLA Obligations or the TLA Loan Documents, the TLB Obligations or the TLB Loan Documents, or the TLC Obligations or the TLC Loan Documents, as applicable, including, without limitation:</p> <ul style="list-style-type: none"> <li>i. any so-called “lender liability” or equitable subordination claims or defenses,</li> <li>ii. any and all claims and causes of action arising under the Bankruptcy Code, and</li> <li>iii. any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the DIP Liens, the TLA Liens, the TLB Liens, the TLC Liens, the DIP Obligations, the TLA Obligations, the TLB Obligations, or the TLC Obligations, as applicable.</li> </ul> <p>The Debtors will further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the TLA Obligations, the TLB Obligations, the TLC Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to the Bankruptcy Court entering the Interim Order.</p> <p>(See ¶ C(xiii) of the Interim Order.)</p>
<p><b>Indemnification</b> <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i> <i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>The Debtors will indemnify and hold harmless the DIP Parties and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (each, an “<u>Indemnified Party</u>”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney’s fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of:</p> <ul style="list-style-type: none"> <li>i. any of the DIP Documents or any other document contemplated thereby or by the Interim Order,</li> <li>ii. the transactions contemplated by the DIP Documents or by the</li> </ul>

	<p>Interim Order (including, without limitation, the exercise by the DIP Parties of discretionary rights granted under the DIP Documents) or</p> <p>iii. any action taken or omitted by the DIP Agent or the DIP Lenders under any of the DIP Documents or any document contemplated thereby or by the Interim Order;</p> <p><u>provided</u>, that, the Debtors shall not have any obligation to indemnify and hold harmless any Indemnified Party with respect to any matter solely resulting from (a) the fraud, gross negligence or willful misconduct of such Indemnified Party, or (b) from violations by such Indemnified Party of the Interim Order, or from breaches by such Indemnified Party of the DIP Documents or the Intercreditor Agreements, in each case as determined by a court of competent jurisdiction in a final non-appealable judgment or order; <u>provided</u> that clause (b) to the immediately preceding proviso shall only apply to causes of action or claims brought by the TLA Agent or the TLA Lenders.</p> <p>No Indemnified Party will have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated by the Interim Order, except to the extent such liability is determined by a court of competent jurisdiction in a final non-appealable judgment or order to have resulted solely from such Indemnified Party's (a) fraud, gross negligence or willful misconduct or (b) solely with respect to the TLA Lenders, violations of the Interim Order, the DIP Documents or the Senior Intercreditor Agreement. No Indemnified Party will be liable for any special, indirect, consequential or punitive damages.</p> <p>All indemnities of the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under the Interim Order and the DIP Documents.</p> <p>(See ¶ 8 of the Interim Order.)</p>
<p><b>Milestones</b></p>	<p>The DIP Credit Agreement provides for the following Milestones:</p> <p>i. a motion to approve the Bidding Procedures shall have been filed with the Bankruptcy Court on or prior to the date that is seven (7) calendar days after the Petition Date (or such later date as the Required DIP Lenders and the TLA Lenders may agree in their discretion);</p> <p>ii. a motion to obtain a Section 363 Order (which shall be in form and substance reasonably acceptable to the Required DIP Lenders) shall have been filed with the Bankruptcy Court on or prior to the date that is seven (7) calendar days after the Petition Date (or such later date as the Required DIP Lenders and the TLA Lenders may agree in their discretion);</p> <p>iii. an auction related to the Bidding Procedures (an "<u>Auction</u>") shall have been conducted on or prior to the date that is fifty-eight (58) calendar days after the Petition Date (or such later date as the Required DIP Lenders and the TLA Lenders may agree in their</p>

	<p>discretion); and</p> <p>iv. the Bankruptcy Court shall have conducted a hearing to obtain entry of a Section 363 Order and entered the Section 363 Order (assuming that an Auction has been held and a winning has been selected), on or before the date that is sixty (60) calendar days after the Petition Date (or such later date as the Required DIP Lenders and the TLA Lenders may agree in their discretion).</p> <p>(See § 7.01(s) and Schedule 7.01(s) of the DIP Credit Agreement.)</p>
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**JUSTIFICATIONS PURSUANT TO LOCAL RULE 4001-2(a)**

34. The terms of the DIP Facility in the Interim Order that require disclosure under Local Rule 4001-2(a)(i) are limited to seeking approval of waivers of any surcharge of costs or expenses under section 506(c) of the Bankruptcy Code, any right to marshalling, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code (disclosure required under Bankr. L.R. 4001-2(a)(i)(H)). While the Motion also seeks to grant liens on avoidance actions to prepetition secured creditors, such relief is only being requested pursuant to the Final Order.

35. These terms are justified because the Debtors are in immediate and critical need of the DIP Facility. As discussed above and further below, the Debtors, despite their efforts to solicit proposals, were unable to obtain financing on an unsecured basis or on a secured basis solely on unencumbered assets pursuant to section 364(c)(2) of the Bankruptcy Code. This is not surprising given the Debtors’ four levels of secured debt with asset values that are insufficient to cover all such secured debt. The only acceptable proposal that would provide the critical liquidity to the Debtors needed to effectuate the terms of a sale of the Debtors’ businesses according to the Restructuring Support Agreement, was provided after extensive negotiations with the DIP Lenders on the terms set forth in the DIP Documents. Without this financing, the Debtors would not be able to pay their employees or vendors, which is essential to operating

their businesses as a going concern and, ultimately, exiting these chapter 11 cases.

**BASIS FOR RELIEF AND APPLICABLE AUTHORITY**

**A. The DIP Facility Should Be Approved Pursuant to Section 364(c) and (d) of the Bankruptcy Code**

36. The DIP Facility is critical to the Debtors' ability to effectuate the terms of a sale of the Debtors' businesses under the Restructuring Support Agreement. As described above, virtually all of the Debtors' assets are encumbered by the liens and security interests of the Prepetition Secured Parties, there are no unencumbered funds with which the Debtors can pay ongoing, day-to-day operation expenses such as wages, rent, and utilities. The only acceptable proposal to provide the necessary financing was in the form of secured credit, with an allowance of superpriority administrative claims.

37. Under section 364(c) of the Bankruptcy Code, the Bankruptcy Court may enter the Interim Order authorizing the Debtors to obtain postpetition financing from the DIP Lenders pursuant to the terms of the DIP Credit Agreement, in the form of secured credit with a superpriority administrative claim. Courts may authorize debtors-in-possession to obtain secured credit under 364(c) upon finding that the debtors were "unable to obtain unsecured credit allowable under section 503(d)(1) of the [Bankruptcy Code]." 11 U.S.C. § 364(c); *see also In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (denying the motion for authorization to enter into a postpetition credit facility where the debtors could not prove that they were unable to obtain unsecured credit allowable as an administrative expense); *In re Ames Dep't Stores*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (finding that the debtor must show it has made a reasonable effort to seek alternative sources of financing under section 364 of the Bankruptcy Code); *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (holding that secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and

hearing, upon showing that unsecured credit cannot be obtained).

38. Courts rely on a three-part test to determine whether debtors are entitled to financing under section 364(c). Courts will look for whether:

- (a) the debtors were unable to obtain unsecured credit with only an administrative claim;
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor and the lender.

*See In re L.A. Dodgers LLC*, 457 B.R. at 312; *see also In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (citing *In re Crouse Grp., Inc.*, 71 B.R. at 549); *Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.)*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *In re Ames Dep't Stores*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990).

39. Whether debtors were unable to obtain unsecured credit is determined by application of a good faith effort standard, and debtors must make a good faith effort to demonstrate that credit was not available without granting a security interest. *In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (“Courts have generally deferred to a debtor’s business judgment in granting section 364 financing”); *In re Gen. Growth Props., Inc.*, 412 B.R. 122, 125 (Bankr. S.D.N.Y. 2009).

40. As set forth in detail in the First Day Declaration, the Debtors commenced the process of evaluating options by which they could deleverage their operations in January 2016 with the hiring of Piper Jaffray & Co. (“PJC”) as their exclusive investment banker. Under the terms of its engagement, PJC explored a refinancing, recapitalization and/or a sale transaction for the Debtors. Beginning in February 2016, as directed by the Debtors’ Board of Directors, PJC contacted parties to determine their interest in an acquisition of the Debtors’ assets. Specifically, PJC contacted 215 potential bidders, representing both financial and strategic potential buyers.

Of these contacted bidders, 173 either reviewed a teaser document or participated in high-level discussions about the transaction, and 76 of these entities ultimately negotiated confidentiality agreements and were provided a Confidential Information Memorandum. Interested parties were asked to participate in an initial discussion with PJC to learn more about the purchase opportunity and the Debtors' assets. Parties who demonstrated sufficient interest in the transaction were then given access to further due diligence information via a package of detailed financial information.

41. In April 2016, four parties provided oral or written indications of interest and were invited to more detailed diligence discussions and presentations with management. Two parties elected at this stage to move forward and participate in follow up discussions, attend a management presentation and review a virtual data room. These parties were then asked to provide written letters of intent for the Board of Directors to consider by early June. By early June 2016, however, PJC had received no letters of intent and all the parties who remained in the process ultimately declined to submit any bid.

42. Beginning in March 2016, PJC, working together with Debtors' counsel and advisors to certain of the Prepetition Secured Parties, began searching for alternative capital for an out-of-court restructuring that would provide liquidity while enabling the TLC and TLD Lenders to remain in the capital structure. Unfortunately, no offers were received for this alternative. However, a potential equity investor was identified and a letter of intent that (at the direction of the Debtors' Board of Directors) was executed by Debtors in July, 2016. The potential equity investor conducted detailed due diligence and held meetings with management, but in August, 2016, decided not to pursue any transaction.

43. In consultation with PJC, the Debtors concluded that the only viable option was restructuring according to the terms of the Restructuring Support Agreement. In order to effectuate the terms of the Restructuring Support Agreement, as described above, obtaining liquidity during the course of these chapter 11 Cases was critical, and the DIP Lenders agreed to provide the DIP Facility on the terms described above, which included the granting of security interests in the assets of the Debtors, including Prepetition Collateral, as well as granting the DIP Lenders the DIP Superpriority Claims.

44. The Debtors sought and were unable to obtain financing from other sources on terms preferable to the proposed DIP facility. Specifically, PJC reached out to four alternative parties for DIP financing, including both the other incumbent Prepetition Lenders (namely, the TLA Lenders and the TLC Lenders) and third parties in the market, all of whom declined to provide postpetition financing to the Debtors. Therefore, the Debtors do not believe that they are able to obtain postpetition financing or other financing accommodations from any prospective lender or group of lenders on more favorable terms and conditions than those offered under the proposed DIP Facility.

45. Whether the proposed DIP Facility is necessary to preserve the assets of the estate is determined by application of the business judgment standard. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 (“cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms and leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”).

46. The DIP Credit Agreement and terms of the proposed Interim Order were negotiated in good faith extensively over several weeks, by parties who were each represented by

their own experts and independent counsel and none of the TLA and TLB lenders or agents is an insider of any of the Debtors. Over the course of many drafts, the terms and conditions improved for the benefit of the Debtors and are the best terms available under the circumstances. Interest under the DIP Facility is comparable to interest under the Term Loan B, and the DIP Credit Agreement largely tracks the TLB Agreement. The terms of the DIP Facility and other factors such as the DIP Lenders' existing familiarity with the Debtors' debt structure, operations and assets, as well as the speed with which the funds can be accessed, made the DIP Facility the best proposal available to the Debtors. In sum, the Debtors respectfully submit that the proposed findings in the Interim Order under 11 U.S.C. § 364(e) are reasonable, necessary and supported by the facts and circumstances of these cases.

47. As discussed above, and in the First Day Declaration, the Debtors have an urgent need to obtain access to credit, to, among other things, continue the operation of their businesses. Without rapid access to liquidity, the Debtors would be unable to fund critical components of their business, including, vendors, suppliers and employee payroll. The inability to continue these operations would jeopardize the Debtors' efforts to complete the sale of the Debtors' businesses contemplated by the Restructuring Support Agreement, which would be highly detrimental to the value of the Debtors' businesses as a going-concern. As a result, the Debtors ultimately determined in their sound business judgment that the DIP Facility represents the best available postpetition financing under the circumstances.

48. The Debtors believe that the terms of the proposed DIP Facility are fair and reasonable in light of current market conditions and are in the best interest of the Debtors' estates. As previously stated above, and in detail in the First Day Declaration, the Debtors worked with PJC to solicit proposals for mergers or acquisitions, or the refinancing or

recapitalization of their businesses. The Debtors received multiple indications of interest that were later rescinded, or that did not provide the adequate financing needed to refinance the Debtors' existing debts. The terms of the DIP Facility are also fair and reasonable because they provide immediate liquidity that will enable the Debtors to complete a sale pursuant to section 363 of the Bankruptcy Code as contemplated by the Restructuring Support Agreement. As stated above and in the Interim Order, the DIP Lenders' DIP Liens and superpriority administrative claim would only cover the proceeds of Avoidance Actions after the entry of a Final Order. Additionally, the security interests and administrative expense claims granted to the DIP Lenders by the proposed DIP Facility and Interim Order are subject to a Carve-Out, which is reasonable and necessary to ensure that official committees, if any, and the Debtors will be assured of the assistance of counsel. *See Ames Dep't Stores*, 115 B.R. at 40.

49. For the foregoing reasons, the Debtors have determined, in the exercise of their sound business judgment, that they require the financing under the terms of the DIP facility and the use of cash collateral pursuant to the terms and conditions of the Interim Order, and hereby request the Court's approval of the DIP Facility.

**B. Granting of Senior Liens under Section 364(d) Is Warranted**

50. If the debtor is unable to obtain credit solely under the provisions of Bankruptcy Code section 364(c), the court, after notice and a hearing, may authorize the debtor to obtain credit secured by a senior or equal lien on the property of the estate that is already subject to a lien. Section 364(d) provides that a debtor may obtain credit secured by a priming lien under 364(d) if:

- (a) the debtor is unable to obtain such credit otherwise; and
- (b) there is adequate protection of existing lienholder.

11 U.S.C. § 364(d).

51. As previously noted, substantially all of the Debtors' assets are encumbered, and obtaining financing from an outside lender without granting a priming lien on the Debtors' assets was not feasible. Following extensive solicitation for refinancing and recapitalization, the Debtors were unable to find a sufficient offer of secured credit to provide the much needed liquidity. The DIP Lenders have outstanding liens on the Debtors' assets, pursuant to the TLB Agreement. In order to finance the restructuring of the prepetition debt held by the Prepetition Lenders, including obtaining liquidity through the course of these chapter 11 cases, the DIP Lenders required that the Debtors grant them senior liens. The Debtors were unable to secure additional liquidity without granting a lien with the priority set forth in the Interim Order.

52. As required by section 364(d) of the Bankruptcy Code, the DIP Credit Agreement and the Interim Order provide adequate protection to (a) the TLA and TLB Lenders, in the form of replacement liens, superpriority administrative expense claims and postpetition interest, and (b) the TLC and TLD Lenders, in the form of replacement liens and superpriority administrative expense claims, in each case in accordance with the terms of the DIP Credit Agreement and the Interim Order. The TLC and TLD Lenders, pursuant to the Junior Intercreditor Agreement, agreed that (i) debtor in possession financing to be provided by any of the TLA or TLB Lenders, or use of cash collateral with the consent of the TLA and TLB Lenders, may be secured by superpriority liens on all or part of the assets of the Debtors and (ii) the TLC and TLD Lenders will not contest or oppose such debtor in possession financing or cash collateral use, and will be deemed to have waived any objections to such debtor in possession financing or cash collateral use, as long as certain conditions set forth in the Junior Intercreditor Agreement are met. The Debtors maintain that the terms of the DIP Facility, the adequate protection and other relief

sought pursuant to this Motion and the Interim and Final Orders satisfy such conditions. *See Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“Each creditor . . . is entitled to seek its own best interest, within the strictures of the bankruptcy code. The fact that those undersecured lienholders either did not object or withdrew their objections to the superpriority financing must mean that they expect to derive some benefit from the transaction. Perhaps each concluded that the superpriority lien would help bring about a successful reorganization or at least increase the value of the collateral, ultimately increasing the amount each will receive on its undersecured claim. The court need not speculate; by tacitly consenting to the superpriority lien, those creditors relieved the debtor of having to demonstrate that they were adequately protected.”). The adequate protection provisions are discussed in further detail above.

53. Because the Debtors were unable to obtain secured credit without priming the TLB Liens, the TLC Liens, and the TLD Liens on their assets, and because the terms of the DIP Credit Agreement and the Interim Order provide adequate protection for the TLB, TLC and TLD Lenders, the Debtors have satisfied the two requirements for allowing the Debtors to obtain postpetition financing secured by a priming liens under section 364(d) of the Bankruptcy Code. The Debtors respectfully request approval of their request to obtain credit secured by a priming lien under section 364(d).

**C. Use of Cash Collateral and Grant of Adequate Protection is Necessary and Appropriate**

54. In addition to the need for debtor in possession financing, the Debtors require immediate use of the Cash Collateral in accordance with the Approved Budget and the Interim Order. The Debtors require use of Cash Collateral to be able to pay the Debtors’ operating expenses, including payroll and other overhead costs (such as rent and utilities), and to pay third

parties and vendors to ensure a continued supply of essential goods. Without access to immediate liquidity, the Debtors will suffer irreparable harm.

55. Bankruptcy Code section 363(c)(2) provides that the Debtors may not use, sell, or lease cash collateral unless: “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). In addition, section 363(e) of the Bankruptcy Code provides that “on request of an entity that has an interest in property used... or proposed to be used... by a [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use... as is necessary to provide adequate protection of such interests.” 11 U.S.C. § 363(e). Here, the requisite prepetition secured parties have consented to the Debtors’ use of the prepetition Cash Collateral.

56. The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) (noting that “its application 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”) (*quoting In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)). The Debtors submit that the proposed adequate protection, as described above, is fair and reasonable and in accordance with the principles of the Bankruptcy Code.

57. Based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to access the Cash Collateral, and to provide the adequate protection in accordance with the terms set forth in the Interim Order.

**D. Modification of the Automatic Stay**

58. The Interim Order contemplates modifying the automatic stay under Bankruptcy Code Section 362 to the extent necessary to permit the performance of any act authorized or permitted under, or by virtue of, the Interim Order, the DIP Credit Agreement or the TLA Agreement.

59. Stay modification provisions of this type are standard features of postpetition debtor in possession financings and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

**E. The Section 506(c) Waiver in the Final Order Should Be Approved**

60. The Court should approve the Debtors' waiver, in the Final Order, of any right to surcharge any or all of the Prepetition Secured Parties or the DIP Lenders, their respective claims, or their respective collateral. Agreeing to the waivers allowed the Debtors to obtain critical financing under the DIP Facility. Further, such waivers and provisions are standard and customary under financings between sophisticated parties. As one court noted in discussing the later enforceability of such waivers, "the Trustee and Debtors-in-Possession in this case had significant interests in asserting claims under § 506(c) and have made use of their rights against the Lender under § 506(c) by waiving them in exchange for concessions to the estate (including a substantial carve-out for the benefit of administrative creditors)." *In re Molten Metal Tech., Inc.*, 244 B.R. 515, 527 (Bankr. D. Mass. 2000); *see also Ansel Props., Inc. v. Nutri/Sys. of Fla. Assocs. (In re Nutri/Sys. of Fla. Assocs.)*, 178 B.R. 645, 649 (E.D. Pa. 1995) (noting that debtor had waived § 506(c) rights in obtaining debtor in possession financing).

**F. The Interim Order Should Be Granted**

61. Bankruptcy Rules 4001(b) and (c)(2) provide that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code or to obtain credit under Bankruptcy Code section 364 may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on such a motion and to authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

62. The Debtors respectfully request that the Court schedule and conduct an initial hearing on the Motion and authorize the Debtors, from the time of the entry of the Interim Order until the Final Hearing, to obtain credit under the terms contained in the DIP Credit Agreement and to utilize the Cash Collateral to the extent set forth in the DIP Credit Agreement and Interim Order.

63. Bankruptcy Rule 6003 provides that a bankruptcy court may grant certain forms of relief during the twenty-one (21) days immediately following the filing date, to the extent necessary to avoid immediate and irreparable harm. As described in detail above and in the First Day Declaration, the Debtors have an immediate need to obtain access to liquidity in under the DIP Facility, in order to operate their businesses, maintain critical relationships with vendors, suppliers and customers, make payroll and fund other working capital and operational needs. Failure to receive interim financing and the use of Cash Collateral would prevent the Debtors from being able to operate their businesses as a going concern and, as a result, from completing the sale of the Debtors' businesses contemplated under the Restructuring Support Agreement.

64. The Debtors seek authority pursuant to the Interim Order to use the Cash Collateral, to enter into the DIP Documents, and to borrow up to an aggregate principal amount

of \$1,000,000 under the DIP Facility. This relief contemplated in the Interim Order will provide the liquidity and resources needed to allow the Debtors to operate in the ordinary course and therefore avoid immediate and irreparable harm and prejudice to the businesses and all parties in interest pending the Final Hearing.

**G. Establishing Notice Procedures and Scheduling Final Hearing**

65. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Juliet Sarkessian, Esq.); (ii) the Debtors' thirty (30) largest unsecured creditors; (iii) counsel to the Prepetition Agents; (iv) counsel to the TLA Lenders and the TLA Agent: (a) Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39<sup>th</sup> Floor, Los Angeles, CA 90067, Attn: Michael L. Tuchin, Esq. and David M. Guess, Esq. and (b) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, DE 19801, Attn: Mark D. Collins, Esq.; (v) counsel to the DIP Agent; (vi) the Internal Revenue Service; (vii) all appropriate state taxing authorities; (viii) all known parties, to the best of the Debtors' knowledge, information, or belief, asserting a lien against the Collateral; (ix) the Debtors' landlords; (x) the United States Securities and Exchange Commission; and (xi) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Initial Notice Parties"). The Debtors submit that, under the circumstances, no further notice of the hearing on the interim financing is necessary and request that any further notice be dispensed with and waived.

66. The Debtors further respectfully request that the Court schedule the Final Hearing and authorize them to mail copies of the signed Interim Order, which fixes the time, date and manner for the filing of objections, to the Initial Notice Parties and any party that has filed a request for notices prior to entry of the Interim Order. The Debtors request that the Court

consider such notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under Bankruptcy Code section 506(c) to be sufficient notice under Bankruptcy Rule 4001 and Local Rule 2002-1.

67. No previous request for the relief sought herein has been made to this Court or any other court.

**Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order**

68. To implement the relief sought in this Motion, the Debtors seek a waiver of the notice requirements of Bankruptcy Rule 6004(a), and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 4001(a)(3), 6004(h), 7062, 9014 or otherwise.

69. Pursuant to Local Rule 9013-1(m), requests for relief on less than seven days' notice and prior to the earlier of the creditors' committee formation meeting or the Bankruptcy Code Section 341 meeting of the creditors are "confined to matters of genuinely emergent nature required to preserve the assets of the estate and to maintain ongoing business operations and such other matters as the Court may deem appropriate." Local Rule 9013-1(m)(ii).

70. As set forth above, without access to capital, the continued operation of the Debtors' businesses would be incredibly burdensome resulting in serious and irreparable harm to the Debtors and their estates. Accordingly, the Debtors submit that they have satisfied the requirements of Local Rule 9013-1(m) to support immediate authority to access the requested capital under the DIP Facility.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

**CONCLUSION**

WHEREFORE the Debtors respectfully request that the Court: (i) enter an order substantially in the form of the proposed Interim Order attached hereto as Exhibit A; (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Court; and (iii) such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware  
October 3, 2016

Respectfully submitted,

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*Proposed Counsel for Debtors and Debtors-in-Possession*

**EXHIBIT A**

**Interim Order**

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

In re:

GARDEN FRESH RESTAURANT  
INTERMEDIATE HOLDING, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-12174 (CSS)

(Joint Administration Requested)

**INTERIM ORDER: (I) PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364  
AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B)  
GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C)  
USE CASH COLLATERAL OF PREPETITION SECURED PARTIES, AND (D) GRANT  
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II)  
SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b)  
AND 4001(c); AND (III) GRANTING RELATED RELIEF**

This matter is before the Bankruptcy Court on the motion dated October 3, 2016 (the “Motion”)<sup>2</sup> of Garden Fresh Restaurant Corp., as a debtor and debtor in possession (the “Company”), Garden Fresh Holdings, Inc. (“Parent”) and their affiliated debtors and debtors in possession (together with the Company and Parent, collectively, the “Debtors” or the “GF Entities”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of an interim order (this “Interim Order”) and a final order (the “Final Order”), under sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1(b), 4001-1, 4001-2 and 9013-1(m) of the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Garden Fresh Restaurant Intermediate Holding, LLC (7513); Garden Fresh Holdings, Inc. (8804); GF Holdings, Inc. (8783); Garden Fresh Restaurant Corp. (8786); and Garden Fresh Promotions, LLC (1376). The location of the Debtors’ corporate headquarters is 15822 Bernardo Center Drive, Suite A, San Diego, California 92127.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the applicable DIP Documents (as defined herein).

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking, among other things:

(1) authorization for the Debtors to (A) obtain postpetition secured debtor in possession financing in an aggregate principal amount of up to \$4,500,000 (the “DIP Facility”) pursuant to the terms and conditions of this Interim Order and that certain Senior Secured Debtor-in-Possession Credit Agreement (substantially in the form attached hereto as Exhibit A, and as hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “DIP Credit Agreement”), dated as of October [\_\_\_], 2016 (the “Closing Date”), by and among the Company, as borrower, each of the other Debtors, as guarantors, Cortland Capital Market Services LLC, as administrative agent and collateral agent (in such capacities, collectively, the “DIP Agent”) and the lenders named therein (the “DIP Lenders” and, together with the DIP Agent and any other party to which DIP Obligations (as defined below) are owed, the “DIP Parties”), and (B) incur the “Secured Obligations” under the DIP Credit Agreement (such Secured Obligations, as provided for and defined in the DIP Credit Agreement, shall be referred to herein as the “DIP Obligations”) (the DIP Credit Agreement together with this Interim Order, any Final Order and any related agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the “DIP Documents”);

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform their respective obligations thereunder and such other and

further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable;

(3) authorization for the Debtors to grant security interests, liens and superpriority claims, including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code (and, solely as set forth in Paragraph 10(c) of this Interim Order, priming liens pursuant to section 364(d)(1) of the Bankruptcy Code), to the DIP Agent, for the benefit of the DIP Parties, in the DIP Collateral (as defined herein), including, without limitation, all property constituting “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, to secure all DIP Obligations, as more fully set forth in this Interim Order; provided that, except as expressly provided in this Interim Order with respect to the Lease Collateral (as defined herein), all liens, security interests, superpriority claims and administrative claims granted in favor of the DIP Agent and DIP Parties will be junior in priority to the liens, security interests, superpriority claims and administrative claims (as applicable) granted in favor of the TLA Agent and the TLA Lenders (as defined herein) and/or securing the TLA Obligations (as defined herein);

(4) authorization for the Debtors’ use of Cash Collateral of the Prepetition Secured Parties (as defined herein) as provided herein, and the provision of adequate protection to the Prepetition Secured Parties, including for any Diminution in Value (as defined herein) of their interests in the Prepetition Collateral (as defined herein), including Cash Collateral, solely as set forth in Paragraph 11 below;

(5) authorization for the Debtors to borrow under the DIP Facility up to an aggregate principal or face amount of \$4,500,000, to be incurred in accordance with the terms and conditions of the DIP Documents to (A) finance, in accordance with the Approved Budget (as defined herein), the ongoing working capital needs of the Debtors and to otherwise fund the operations and administration of the Debtors during these Chapter 11 Cases, (B) make required adequate protection payments and (C) pay costs and expenses in connection with the DIP Documents and these Chapter 11 Cases to the extent set forth in the Approved Budget, including, but not limited to, professional expenses;

(6) an interim hearing (the “Interim Hearing”) on the Motion for this Court to consider entry of this Interim Order;

(7) the scheduling of a final hearing (the “Final Hearing”) on the Motion for a date that is before the 28th day after the Petition Date (as defined herein) to consider entry of a Final Order, *inter alia*, authorizing the borrowings under the DIP Facility on a final basis and approval of notice procedures with respect thereto; and

(8) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order.

This Court having found that notice of the Motion and Interim Hearing was provided by the Debtors as set forth in Paragraph K below, and having held the Interim Hearing on October [\_\_\_], 2016 after considering all the pleadings, motions and other papers filed with this Court and as further stated on the record at the Interim Hearing; and this Court having overruled all unresolved objections to the interim relief requested in the Motion; and upon the

record made by the Debtors at the Interim Hearing, the First Day Declaration, and after due deliberation and consideration and good and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. Petition Date. On October 3, 2016 (the "Petition Date"), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014 and Local Rules 2002-1(b), 4001-1, 4001-2 and 9013-1(m).

C. Debtors' Stipulations. Without prejudice to the rights of any other non-Debtor party-in-interest with standing (but subject to the limitations thereon described in Paragraph 15 below), the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) Pursuant to (a) that certain Financing Agreement, dated as of October 3, 2013 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "TLA Agreement"), by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a "Borrower" or

“Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLA Lenders”), Cerberus Business Finance, LLC, as administrative agent and collateral agent for such lenders (in such capacities, the “TLA Agent”), and certain other parties thereto, and (b) the other “Loan Documents” (as defined in the TLA Agreement and, together with the TLA Agreement, the “TLA Loan Documents”), the TLA Lenders provided a loan to and for the benefit of the Company. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLA Lenders and TLA Agent, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued in the aggregate outstanding principal amount under the TLA Loan Documents of not less than \$87,366,250.00, plus accrued and unpaid interest and fees with respect thereto (which, as of October 1, 2016, was not less than \$840,851.50, which amount, for the avoidance of doubt, does not include the TLA Agent’s and the TLA Lenders’ accrued and unpaid attorneys’ fees, costs, and expenses, or any “Applicable Prepayment Premium” (as defined in the TLA Loan Documents) or any other premium, make-whole or penalty payments otherwise required by the terms of the TLA Loan Documents upon a prepayment or acceleration of the TLA Obligations) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLA Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower’s obligations pursuant to the TLA Loan Documents, collectively the “TLA Obligations”);

(ii) To secure the TLA Obligations, the Borrower granted to the TLA Agent and the TLA Lenders a security interest in and lien upon (the “TLA Liens”) all “Collateral” under and as defined in the TLA Loan Documents (collectively, the “TLA Collateral”);

(iii) Pursuant to (a) that certain Financing Agreement, dated as of October 3, 2013 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “TLB Agreement”), by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a “Borrower” or “Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLB Lenders”), Cortland Capital Market Services LLC, as administrative agent and collateral agent for such lenders (in such capacities, the “TLB Agent”), and certain other parties thereto, and (b) the other “Loan Documents” (as defined in the TLB Agreement and, together with the TLB Agreement, the “TLB Loan Documents”), the TLB Lenders provided a loan to and for the benefit the Company. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLB Lenders and TLB Agent, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate outstanding principal amount under the TLB Loan Documents of not less than \$35,662,159.70, plus accrued and unpaid interest and fees with respect thereto (which amount, for the avoidance of doubt, does not include the TLB Agent’s and the TLB Lenders’ accrued and unpaid attorneys’ fees, costs, and expenses, or any “Applicable Prepayment Premium” (as defined in the TLB Loan Documents) or any other premium, make-whole or penalty

payments otherwise required by the terms of the TLB Loan Documents upon a prepayment or acceleration of the TLB Obligations) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLB Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower's obligations pursuant to the TLB Loan Documents, collectively the "TLB Obligations");

(iv) To secure the TLB Obligations, the Borrower granted to the TLB Agent and the TLB Lenders a security interest in and lien upon (the "TLB Liens") all "Collateral" under and as defined in the TLB Loan Documents (collectively, the "TLB Collateral");

(v) Pursuant to (a) that certain Financing Agreement, dated as of October 3, 2013 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "TLC Agreement"), by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a "Borrower" or "Guarantor" thereunder, the lenders party thereto from time to time (including Sun Garden Fresh Finance, LLC ("Sun Garden")) (collectively, the "TLC Lenders"), Apollo Investment Corporation, as administrative agent and collateral agent for such lenders (in such capacities, the "TLC Agent"), and certain other parties thereto, and (b) the other "Loan Documents" (as defined in the TLC Agreement and, together with the TLC Agreement, the "TLC Loan Documents"), the TLC Lenders provided a loan to and for the benefit the Company. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLC Lenders and TLC Agent, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate outstanding principal amount under the TLC Loan Documents of not less than \$[15,737,595.00], plus accrued and unpaid interest and fees with respect thereto (which, as of the Petition Date, was not less than \$[4,067,241.85]) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLC Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower's obligations pursuant to the TLC Loan Documents, collectively the "TLC Obligations");

(vi) To secure the TLC Obligations, the Borrower granted to the TLC Agent and the TLC Lenders a security interest in and lien upon (the "TLC Liens") all "Collateral" under and as defined in the TLC Loan Documents (collectively, the "TLC Collateral");

(vii) Pursuant to (a) that certain Financing Agreement, dated as of October 3, 2013 (as amended, supplemented or otherwise modified from time to time in

accordance with the terms thereof, the “TLD Agreement” and, together with the TLA Agreement, the TLB Agreement and the TLC Agreement, the “Prepetition Credit Agreements”), by and among Parent, the Company, each direct and indirect subsidiary of Parent that is a “Borrower” or “Guarantor” thereunder, the lenders party thereto from time to time (collectively, the “TLD Lenders” and, together with the TLA Lenders, the TLB Lenders and the TLC Lenders, the “Prepetition Lenders”), Apollo Investment Corporation, as administrative agent and collateral agent for such lenders (in such capacities, the “TLD Agent” and, together with the TLA Agent, the TLB Agent and the TLC Agent, the “Prepetition Agents” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”), and certain other parties thereto, and (b) the other “Loan Documents” (as defined in the TLD Agreement and, together with the TLD Agreement, the “TLD Loan Documents” and, together with the TLA Loan Documents, the TLB Loan Documents and the TLC Loan Documents, the “Prepetition Credit Documents”), the TLD Lenders provided a loan to and for the benefit the Company. As of the Petition Date, the Debtors were truly and justifiably indebted to the TLD Lenders and TLD Agent, without defense, counterclaim or offset of any kind, in respect of loans made in the aggregate outstanding principal amount under the TLD Loan Documents of not less than \$[33,305,369.00], plus accrued and unpaid interest and fees with respect thereto (which, as of the Petition Date, was not less than \$[18,639,528.38]) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the TLD Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Borrower’s obligations pursuant to the TLD Loan Documents, collectively the “TLD Obligations” and, together with the TLA Obligations, the TLB Obligations and the TLC Obligations, the “Prepetition Secured Obligations”);

(viii) To secure the TLD Obligations, the Borrower granted to the TLD Agent and the TLD Lenders a security interest in and lien upon (the “TLD Liens” and, together with the TLA Liens, the TLB Liens and the TLC Liens, the “Prepetition Liens”) all “Collateral” under and as defined in the TLD Loan Documents (collectively, the “TLD Collateral” and, together with the TLA Collateral, the TLB Collateral and the TLC Collateral, the “Prepetition Collateral”);

(ix) (a) the Prepetition Secured Obligations constitute legal, valid, enforceable and binding obligations of each of the Debtors; (b) no offsets, defenses or counterclaims to the Prepetition Secured Obligations exist; (c) no portion of the Prepetition Secured Obligations is subject to avoidance, disallowance, reduction or (other than as contemplated by the Intercreditor Agreements, this Interim Order, and Bankruptcy Code section 510(a)) subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Prepetition Credit Documents are valid and enforceable by the Prepetition Secured Parties against each of the Debtors; (e) the Prepetition Liens were perfected as of the Petition Date and constitute legal, valid, binding, enforceable and perfected liens in and to the Prepetition Collateral and are not

subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or (other than as contemplated by the Intercreditor Agreements, this Interim Order, and Bankruptcy Code section 510(a)) subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and such liens had priority over any and all other liens on the Prepetition Collateral (with the Prepetition Liens having priority in the following order: (i) TLA Liens; (ii) TLB Liens; (iii) TLC Liens; and (iv) TLD Liens), subject only to certain liens otherwise expressly permitted by the Prepetition Credit Documents (to the extent any such permitted liens were legal, valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date or thereafter pursuant to section 546(b) of the Bankruptcy Code, the “Permitted Liens”); (f) the Prepetition Secured Obligations constitute allowed secured claims against the Debtors’ estates; and (g) the Debtors and their estates have no claim, objection, challenge or cause of action against the Prepetition Secured Parties or any of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, whether arising under applicable state or federal law (including, without limitation, any recharacterization, (other than as contemplated by the Intercreditor Agreements, this Interim Order, and Bankruptcy Code section 510(a)) subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), in connection with any of the Prepetition Credit Documents (or the transactions contemplated thereunder), the Prepetition Secured Obligations or the Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery;

(x) Certain of the Debtors are parties to (a) that certain Intercreditor Agreement, dated October 3, 2013, by and among certain of the Debtors, the TLA Agent, the TLA Lenders, the TLB Agent, and the TLB Lenders (the “Senior Intercreditor Agreement”), (b) that certain Intercreditor and Subordination Agreement, dated October 3, 2013, by and among certain of the Debtors, the Prepetition Agents, and the Prepetition Lenders (the “Junior Intercreditor Agreement”), and (c) that certain Intercreditor and Subordination Agreement, dated October 3, 2013, by and among certain of the Debtors, the TLC Agent, and the TLD Agent (together with the Senior Intercreditor Agreement and the Junior Intercreditor Agreement, the “Intercreditor Agreements”), and upon the incurrence of the DIP Obligations by the Debtors, the aggregate amount of all outstanding TLA Obligations, TLB Obligations and DIP Obligations will not exceed the Maximum Senior Principal Amount (as defined in the Junior Intercreditor Agreement);

(xi) All of the Debtors’ cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Agents and the other Prepetition Secured Parties, as applicable;

(xii) As a result of, among other things, the commencement of the Chapter 11 Cases, the Debtors are in default of their debts and obligations under the Prepetition Credit Agreements; and

(xiii) Subject to the entry of the Final Order, the Debtors hereby forever, unconditionally and irrevocably release, discharge and acquit the DIP Agent, the DIP Lenders, the TLA Agent, the TLA Lenders, the TLB Agent, the TLB Lenders, Sun Garden Fresh Finance, LLC (solely in its capacity as a TLC Lender) and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the “Releasees”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys’ fees), debts, liens, actions and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to the DIP Facility or the DIP Documents, the TLA Obligations or the TLA Loan Documents, the TLB Obligations or the TLB Loan Documents, or the TLC Obligations or the TLC Loan Documents, as applicable, including, without limitation, (A) any so-called “lender liability” or equitable subordination claims or defenses, (B) any and all claims and causes of action arising under the Bankruptcy Code, and (C) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the DIP Liens, the DIP Obligations, the TLA Liens, the TLA Obligations, the TLB Liens, the TLB Obligations, the TLC Liens and the TLC Obligations, as applicable. Subject to the entry of the Final Order, the Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the TLA Obligations, the TLB Obligations, the TLC Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to the Bankruptcy Court entering this Interim Order.

D. Need for Post-Petition Financing. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and the use of Cash Collateral. The Debtors’ ability to maintain business relationships with their vendors, suppliers, and employees, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors’ continued viability. In addition, based on the record presented at the Interim Hearing: (i) the Debtors’ critical need for financing is immediate and the entry of this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors’

estates; (ii) in the absence of the DIP Facility and the use of Cash Collateral, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors and their estates would occur; and (iii) the preservation, maintenance and enhancement of the going concern value of the Debtors are of the utmost significance and importance to the Debtors' contemplated sale of their assets that will enable the Debtors to reorganize successfully and continue as a going concern.

E. No Credit on More Favorable Terms. As set forth in the Motion, the Debtors, through their advisors, contacted four alternative parties (including both incumbent lenders and third parties in the market), all of whom declined to provide postpetition financing. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facility and the DIP Documents (including, but not limited to, financing that is junior in priority in relation to the TLA Obligations), and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the DIP Agent for the benefit of the DIP Lenders the (i) DIP Superpriority Claims (as defined herein) and (ii) DIP Liens (as defined herein) in the DIP Collateral, as provided herein and in the DIP Documents.

F. Findings Regarding the DIP Facility. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty and are supported by reasonably equivalent value and fair consideration, (ii) the DIP Facility has been negotiated in good faith and at arm's length among the Debtors and

the DIP Parties and (iii) any credit extended, loans made and other financial accommodations extended to the Debtors by the DIP Parties have been extended, issued or made, as the case may be, in “good faith” within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by Bankruptcy Code section 364(e), and the DIP Facility, the DIP Liens and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

G. Need for Use of Cash Collateral. An immediate and critical need exists for the Debtors to use the Cash Collateral (in addition to the DIP Facility) to continue to operate their businesses in the ordinary course, pay wages, maintain business relationships with vendors and suppliers, make payroll, make capital expenditures, make adequate protection payments, generally conduct their business affairs so as to avoid immediate and irreparable harm to their estates and the value of their assets, and afford the Debtors adequate time to finalize and execute documents under the DIP Facility (subject to and within the limits imposed by the terms of this Interim Order).

H. Use of Proceeds of the DIP Facility; Use of Cash Collateral; Consent of Prepetition Secured Parties. The Debtors have received the necessary consents from the Prepetition Secured Parties to the (i) financing arrangements contemplated by this Interim Order and the DIP Documents and (ii) Debtors’ proposed use of Cash Collateral, on the terms and conditions set forth in this Interim Order. Such consents are expressly limited to the postpetition financing being provided by the DIP Lenders and the use of Cash Collateral (in each case as contemplated by this Interim Order and the DIP Documents) and the provision of adequate protection herein, and shall not extend to any other postpetition financing or to any modified

version of the DIP Facility or to any modified version of the use of Cash Collateral. As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and Cash Collateral shall be used, in each case only in a manner consistent with the terms and conditions of the DIP Documents and this Interim Order and in accordance with the Approved Budget, solely for the purposes set forth in the DIP Credit Agreement and this Interim Order, including (v) working capital and other general corporate purposes, (w) adequate protection payments, solely as provided for hereunder, (x) the permitted payment of costs of administration of the Chapter 11 Cases, (y) payment of fees and expenses related to the DIP Facility as set forth herein and in the DIP Documents, and (z) payment of such prepetition expenses as consented to by the DIP Agent (at the direction of the Required DIP Lenders), the TLA Agent and the TLB Agent and approved by the Bankruptcy Court, including prepetition expenses approved by the Bankruptcy Court in connection with the Debtors' "first day" motions.

I. Adequate Protection. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code, solely as set forth in Paragraph 11 below, including for any diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) resulting from, among other things, (i) the Debtors' use, sale or lease of such collateral, (ii) market value decline of such collateral, (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and (iv) the subordination to the Carve-Out (as defined herein) (collectively, and solely to the extent of any such diminution in value, the "Diminution in Value").

J. Intercreditor Agreements. Each of the Intercreditor Agreements constitutes a legal, valid, enforceable and binding “subordination agreement” within the meaning of Bankruptcy Code section 510(a). Other than as expressly provided herein, the DIP Obligations, DIP Liens, and DIP Superpriority Claims (each as defined herein) are subject to the same terms, obligations and restrictions under the Senior Intercreditor Agreement as if they were TLB Liens and TLB Obligations, as applicable. Pursuant to the Junior Intercreditor Agreement, the TLC Agent and the TLD Agent have limited rights to contest and/or object to the DIP Facility and the Debtors’ use of Cash Collateral as provided herein.

K. Notice. Telephonic, facsimile notice or overnight mail notice of this Interim Hearing and the proposed entry of this Interim Order has been provided to: (i) the thirty (30) largest unsecured creditors; (ii) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Prepetition Agents; (v) all known parties, to the best of the Debtors’ knowledge, information, or belief, asserting a lien against the DIP Collateral; (vi) the Debtors’ landlords; (vii) the Internal Revenue Services and applicable state taxing authorities; (viii) the United States Securities and Exchange Commission; and (ix) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided for entry of this Interim Order.

L. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Interim Order, the Debtors’ businesses, properties and estates will be immediately and

irreparably harmed. This Court concludes that entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for successful reorganization or a sale of their assets as a going concern or otherwise.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Approval of Interim Order. The Motion is approved on the terms and conditions set forth in this Interim Order. Any objections to the interim relief requested in the Motion that have not previously been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. Approval of DIP Documents; Authority Thereunder. The Debtors are hereby authorized to enter into, and execute and deliver, the DIP Documents, including the DIP Credit Agreement, and such additional documents, instruments, certificates and agreements as may be required or requested by the DIP Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents.

3. Validity of DIP Documents. Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute, and is hereby deemed to be, the legal, valid and binding obligation of the Debtors party thereto, enforceable against each such Debtor in accordance with its terms. Loans advanced under the DIP Credit Agreement (the "DIP Loans") until the Final Hearing will be made to fund the Debtors' working capital and general corporate needs in the ordinary course of business and to pay such other amounts as are required

or permitted to be paid pursuant to the DIP Credit Agreement, this Interim Order and any other orders of this Court, in each case to the extent permitted under the DIP Credit Agreement and the Approved Budget. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order with respect to the DIP Facility shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

4. Authorization to Borrow; Use of Cash Collateral. Upon entry of this Interim Order, the Debtors are immediately authorized to borrow from the DIP Lenders under the DIP Facility in an aggregate principal amount equal to \$1,000,000 (the “Initial Draw”), subject to the terms and conditions set forth in the DIP Documents and this Interim Order and in accordance with the Approved Budget. The DIP Agent and the DIP Lenders shall have no obligation to make any loan or advance unless all of the conditions precedent to the making of such extension of credit under the DIP Documents have been satisfied in full or waived by the DIP Agent acting at the direction of the Required DIP Lenders. Subject to the terms and conditions of this Interim Order, the DIP Documents and in accordance with the Approved Budget, the Debtors are authorized to use Cash Collateral until the earlier of (a) the Final Maturity Date and (b) the date upon which the Debtors’ right to use Cash Collateral is terminated hereunder.

5. Use of Proceeds and Cash Collateral. From and after the entry of this Interim Order, the Debtors shall use advances of credit under the DIP Facility and Cash Collateral only for the purposes permitted by this Interim Order and the DIP Documents and in compliance with the Approved Budget. The Debtors are authorized to use the proceeds of the DIP Loans and Cash Collateral, in part, to make certain adequate protection payments to the

Prepetition Secured Parties, solely as provided for in Paragraph 11 of this Interim Order and subject to and in accordance with the Approved Budget.

6. Approved Budget.

(a) General. Except as otherwise provided herein or approved by the DIP Agent (at the direction of the Required DIP Lenders), the TLA Agent and the TLB Agent, the proceeds of the DIP Facility and Cash Collateral shall be used only in compliance with the Approved Budget (including in connection with the adequate protection payments provided for in Paragraph 11 of this Interim Order). Attached as Exhibit 1 hereto and incorporated by reference herein is a summary 13-week cash flow forecast setting forth “Total Operating Disbursements” and “Disbursements – Non Operations” on a weekly basis for the period beginning as of the week of the Closing Date through and including the 13th week after the Closing Date, broken down by week, including the anticipated weekly uses of the proceeds of the DIP Facility and the Cash Collateral for such period, which shall include, among other things, available cash, cash flow, payment of trade payables and ordinary course expenses, total cash disbursements and capital expenditures, fees and expenses relating to the DIP Facility, and working capital and other general corporate needs of the Debtors (a more detailed version of such cash-flow forecast delivered to the DIP Agent, the DIP Lenders and the Prepetition Agents, on or prior to the date hereof, hereinafter, the “Initial Budget”). Upon entry of this Interim Order and approval by the DIP Agent (at the direction of the Required DIP Lenders), the TLA Agent and the TLB Agent, the Initial Budget shall be deemed an “Approved Budget”.

(b) [Reserved].

(c) Not later than 1:00 p.m. (New York time) on the last Sunday of every second (2nd) calendar week, the Debtors shall deliver to the DIP Agent (for further

delivery to the DIP Lenders) and the Prepetition Agents (for further delivery to the Prepetition Secured Parties), a report (a “Variance Report”) setting forth the actual cash flows for the immediately preceding Test Period with respect to each line item in the Approved Budget; provided that each Variance Report delivered during the week after a Test Date shall also set forth such cash flows for the Test Period most recently ended, together with the percentage, if any, by which such actual cash flows for each line item exceeded or were less than the cash flows set forth in the Approved Budget for such Test Period.

7. Payment of DIP Expenses. Subject to the limitations set forth below, the Debtors are hereby authorized and directed to pay upon demand all costs, expenses and other amounts payable under the terms of the DIP Documents and all other reasonable out-of-pocket costs and expenses of the DIP Parties in accordance with the terms of the DIP Documents (including, without limitation, the reasonable prepetition and postpetition fees and out-of-pocket costs and expenses of one lead counsel (which shall initially be Stroock & Stroock & Lavan LLP), one Delaware counsel (which shall initially be Pachulski, Stang, Ziehl & Jones LLP) and any other necessary local or regulatory counsel in connection with advising the DIP Parties), subject to receiving a written invoice therefor. None of such fees, costs, expenses or other amounts shall be subject to Court approval (subject to the limitations below) or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee, counsel to the TLA Agent and counsel to any official unsecured creditors’ committee appointed in these Chapter 11 Cases (the “Committee”) (if any); provided further, however, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any

information constituting attorney work product, or any other confidential information (the “Redactions”), and the provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. If any of the Debtors, U.S. Trustee, the TLA Agent or the Committee (if any) objects to the reasonableness of the fees and expenses of any DIP Parties, and such objection cannot be resolved within ten (10) days of receipt of such invoices, the Debtors, the U.S. Trustee, the TLA Agent or the Committee (if any), as the case may be, shall file with the Court and serve on such DIP Parties an objection limited to the reasonableness of such fees and expenses (each, a “Reasonableness Fee Objection”). Without limiting the foregoing, if the U.S. Trustee, the TLA Agent or the Committee (if any) objects to the Redactions and such objection cannot be resolved within ten (10) days of receipt of such invoices, the DIP Parties subject to such Redaction objection shall file with the Court and serve on counsel to the Debtors, the U.S. Trustee, counsel to the TLA Agent and counsel to the Committee (if any) a request for Court resolution of the disputes concerning the propriety of the disputed Redactions (each, a “Redaction Fee Objection,” and each Reasonableness Fee Objection and Redaction Fee Objection may be referred to herein generally as a “Fee Objection”). Any hearing on an objection or request, as applicable, regarding payment of any fees, costs, and expenses set forth in a professional fee invoice shall be limited to the propriety of the Redactions and the reasonableness of the particular items or categories of the fees, costs, and expenses, in each case which are the subject of such objection or request, as applicable. The Debtors shall pay in accordance with the terms and conditions of this Interim Order within fifteen (15) days after receipt of the applicable invoice (a) the full amount invoiced if no objection has been timely filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to which an objection has been timely filed. All such unpaid fees, costs, expenses and

other amounts owed or payable to the DIP Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Documents. Notwithstanding anything in this Paragraph or the DIP Documents to the contrary, any fees, costs and expenses of the DIP Agent and the DIP Lenders (including professional fees) in excess of the Approved Budget will be paid-in-kind and added to the DIP Obligations.

8. Indemnification. The Debtors are hereby authorized to and hereby agree to indemnify and hold harmless the DIP Parties and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (each, an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of any of the DIP Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Interim Order (including, without limitation, the exercise by the DIP Parties of discretionary rights granted under the DIP Documents) or any action taken or omitted by the DIP Agent or the DIP Lenders under any of the DIP Documents or any document contemplated hereby or thereby; provided that the Debtors shall not have any obligation to indemnify and hold harmless any Indemnified Party under this Paragraph with respect to any matter solely resulting from (a) the fraud, gross negligence or willful misconduct of such Indemnified Party, or (b) from violations by such Indemnified Party of this Interim

Order, or from breaches by such Indemnified Party of the DIP Documents or the Intercreditor Agreements, in each case as determined by a court of competent jurisdiction in a final non-appealable judgment or order; provided that clause (b) to the immediately preceding proviso shall only apply to causes of action or claims brought by the TLA Agent or the TLA Lenders. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is determined by a court of competent jurisdiction in a final non-appealable judgment or order to have resulted solely from such Indemnified Party's (a) fraud, gross negligence or willful misconduct or (b) solely with respect to the TLA Agent and the TLA Lenders, violations of this Interim Order, the DIP Documents or the Senior Intercreditor Agreement. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages. All indemnities of the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Documents.

9. DIP Superpriority Claims. In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute senior administrative expense claims against each Debtor, on a joint and several basis, (the "DIP Superpriority Claims") with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever, including, without limitation, the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant

to section 1112 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; provided, however, that the DIP Superpriority Claims shall be subject to the payment in full in cash of any amounts due (i) in respect of the TLA Superpriority Claims and (ii) under the Carve-Out; provided, further that the DIP Superpriority Claims shall have recourse to and be payable from all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, including, subject to the entry of the Final Order, proceeds of avoidance actions under chapter 5 of the Bankruptcy Code.

10. DIP Liens. As security for the DIP Obligations, the DIP Agent, for the benefit of the DIP Lenders, is hereby granted (effective upon the date of this Interim Order, without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instrument or otherwise or the possession or control by the DIP Parties), as contemplated under the DIP Documents, valid, perfected, and unavoidable security interests in and liens upon (such security interests and liens, collectively, the “DIP Liens”) any and all present and after-acquired tangible and intangible property and assets of the Debtors and their estates, whether real or personal, of any nature whatsoever and wherever located, including, without limitation: (a) all Prepetition Collateral; (b) all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, general intangibles, instruments, inventory, and investment property and support obligations; (c) Commercial Tort Claims; (d) all books and records pertaining to the other property described in this Paragraph 10; (e) all other goods (including but not limited to fixtures) and personal property of such Debtor, whether tangible or intangible and wherever located; (f) subject to the entry of the Final Order, the proceeds of avoidance actions under

chapter 5 of the Bankruptcy Code; and (g) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing, and in each case to the extent of any Debtor's respective interest therein (all of which being hereinafter collectively referred to as the "DIP Collateral"); provided, however, that (i) the DIP Collateral shall not include either (a) Excluded Property (as defined in the DIP Credit Agreement) or (b) any avoidance action under chapter 5 of the Bankruptcy Code (but, subject to the entry of the Final Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code shall be included in the DIP Collateral), (ii) the DIP Liens shall be subject to the payment in full in cash of the amounts due under the Carve-Out and (iii) the DIP Liens shall be junior to the TLA Liens and the TLA Replacement Liens (other than in the Debtors' unexpired real property leases and the proceeds thereof (the "Lease Collateral")) and otherwise have the priority as follows:

(a) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected liens upon and security interests in all of the Debtors' right, title and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected unavoidable security interest or lien on the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code); provided, that, the liens and security interests granted to the Debtors in such DIP Collateral (other than in the Lease Collateral) shall be junior to the TLA Liens and the TLA Replacement Liens;

(b) subject to clause (c) below, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected lien upon and security interest in all of the Debtors' right, title and interest in, to and under all DIP Collateral which as of the Petition Date was encumbered by the Prepetition Liens, junior only to the TLA Liens, the TLA Replacement Liens and the Permitted Liens, and senior to any other lien upon, or security interest in, the DIP Collateral, including, for the avoidance of doubt, the TLB Liens, the TLB Replacement Liens, the TLC Liens, the TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens;

(c) pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, senior, priming, fully perfected lien upon and security interest in all of the Debtors' right, title and interest in, to and under the DIP Collateral, (A) junior only to (i) the Carve-Out, (ii) the TLA Liens, (iii) the TLA Replacement Liens (other than in the Lease Collateral), (iv) the Permitted Liens and (v) a valid perfected unavoidable security interest or lien in existence as of the Petition Date or that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code and that is a Permitted Lien and expressly permitted in the DIP Credit Agreement to be senior to the DIP Liens granted to the DIP Agent and the DIP Lenders in this Interim Order to secure the DIP Obligations, and (B) senior to any other lien upon, or security interest in, the DIP Collateral, including, for the avoidance of doubt, the TLB Liens, the TLB Replacement Liens, the TLC Liens, the TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens; and

(d) the DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, provided, however, that if the TLA Liens or TLA

Replacement Liens are avoided (or are determined not to be valid, enforceable, or perfected), the DIP Agent nonetheless shall be required to pay over to the TLA Agent amounts that the DIP Agent receives that the DIP Agent would otherwise have had to pay over to the TLA Agent had the TLA Liens and TLA Replacement Liens not been avoided (or determined to be invalid, unenforceable, or unperfected), (ii) except as expressly set forth herein or in the DIP Documents, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases (for the avoidance of doubt, excluding any lien or security interest heretofore or hereinafter granted to the TLA Agent or the TLA Lenders), including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors to the extent permitted by applicable non-bankruptcy law or (iii) any intercompany or affiliate liens of the Debtors. The DIP Liens shall not be subject to sections 506(c), 510(b)–(c) (as opposed to section 510(a), which is applicable), 549, 550 or 551 of the Bankruptcy Code.

11. Adequate Protection.

(a) As adequate protection of the interest of the TLA Agent and the TLA Lenders in the TLA Collateral, the TLA Agent and the TLA Lenders are hereby granted:

(i) payment of regularly scheduled cash interest, calculated at the non-default rate under the TLA Agreement;

(ii) subject to the limitations set forth below, payment upon demand of all costs, expenses and other amounts payable under the terms of the TLA Loan Documents and all other reasonable out-of-pocket costs and expenses of the TLA Agent and TLA Lenders in accordance with the terms of the TLA Loan Documents (including, without limitation, the reasonable prepetition and postpetition fees and out-of-pocket

costs and expenses of one lead counsel (which shall be Klee, Tuchin, Bogdanoff & Stern LLP), one Delaware counsel (which shall be Richards, Layton & Finger PA) and any other necessary local or regulatory counsel in connection with advising the TLA Agent and TLA Lenders), subject to receiving a written invoice therefor, and regardless of whether such amounts are in excess of the amounts set forth in the Approved Budget. None of such fees, costs, expenses or other amounts shall be subject to Court approval (subject to the limitations below) or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee, counsel to the DIP Agent, and counsel to the Committee; provided further, however, that such invoices may contain Redactions, and the provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. If any of the Debtors, U.S. Trustee, the DIP Agent, or the Committee (if any) objects to the reasonableness of the fees and expenses of any TLA Agent or the TLA Lenders, and such objection cannot be resolved within ten (10) days of receipt of such invoices, the Debtors, the U.S. Trustee, the DIP Agent, or the Committee (if any), as the case may be, shall file with the Court and serve on the TLA Agent and TLA Lenders a Reasonableness Fee Objection. Without limiting the foregoing, if the U.S. Trustee, the DIP Agent, or the Committee (if any) objects to the Redactions and such objection cannot be resolved within ten (10) days of receipt of such invoices, the TLA Agent and TLA Lenders subject to such Redaction objection shall file with the Court and serve on counsel to the Debtors, the U.S. Trustee, counsel to the DIP Agent, and counsel to the Committee (if any) a Redaction Fee

Objection. Any hearing on an objection or request, as applicable, regarding payment of any fees, costs, and expenses set forth in a professional fee invoice shall be limited to the propriety of the Redactions and the reasonableness of the particular items or categories of the fees, costs, and expenses, in each case which are the subject of such objection or request, as applicable. The Debtors shall pay in accordance with the terms and conditions of this Interim Order within fifteen (15) days after receipt of the applicable invoice (a) the full amount invoiced if no objection has been timely filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to which an objection has been timely filed, in each case regardless of whether such amounts are in excess of the amounts set forth in the Approved Budget. All such fees, costs, expenses and other amounts owed or payable to the TLA Agent and the TLA Lenders shall be secured by the TLA Liens and TLA Replacement Liens (as defined below), and afforded all of the priorities and protections afforded to the TLA Obligations under this Interim Order and the TLA Loan Documents. Notwithstanding anything in this Paragraph to the contrary, any fees, costs and expenses of the TLA Agent and the TLA Lenders (including professional fees) in excess of the Approved Budget will be paid-in-kind and added to the TLA Obligations;

(iii) solely to the extent of the Diminution in Value of the interest of the TLA Agent and TLA Lenders in the TLA Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be (1) senior to the (v) liens in favor of the DIP Parties securing the DIP Obligations (other than with respect to the Lease Collateral, in which the liens in favor of the DIP Parties securing the DIP Obligations shall be senior to the TLA Liens and TLA Replacement

Liens), (w) the TLB Liens and the TLB Replacement Liens (as defined herein), (x) the TLC Liens and the TLC Replacement Liens (as defined herein), (y) the TLD Liens and the TLD Replacement Liens (as defined herein) and (z) all other liens and security interests whatsoever in the DIP Collateral, and (2) junior and subject only to the Carve-Out and the liens in favor of the DIP Parties in the Lease Collateral (the “TLA Replacement Liens”);

(iv) solely to the extent of the Diminution in Value of the interest of the TLA Agent and TLA Lenders in the TLA Collateral from and after the Petition Date, superpriority administrative expense claims (the “TLA Superpriority Claims”) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors’ estates, which TLA Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided that the TLA Superpriority Claims shall be subject to the payment in full in cash of the amounts due under the Carve-Out; provided, further, that, for the avoidance of doubt, the TLA Superpriority

Claims shall be paid in cash in full prior to any payment of the DIP Superpriority Claims, the TLB Superpriority Claims, the TLC Superpriority Claims, and the TLD Superpriority Claims; and

(v) access to the Debtors' books and records, delivery of such financial or any other reports as are provided to the DIP Agent contemporaneously with delivery of the same to the DIP Agent, and reasonable advance notice of, and an invitation to participate in, all meetings that include the DIP Lenders.

In the event the TLA Obligations are irrevocably paid in full in cash and the Investigation Termination Date or the 363 Closing Date has passed without any Challenge filed against the TLA Agent or TLA Lenders or otherwise relating to the TLA Liens or TLA Obligations, the Debtors' obligation to provide the TLA Lenders and the TLA Agent the adequate protection pursuant to this Paragraph shall terminate on and as of the date of such payment, the Investigation Termination Date or the 363 Closing Date, whichever is later, without further notice to or action of any person. In the event that any portion of the TLA Obligations is ordered by the Bankruptcy Court to be reinstated or the proceeds of the repayment thereof are disgorged, for so long as such portion of the TLA Obligations remains outstanding, the adequate protection provided for in this Paragraph shall be reinstated with respect to such outstanding TLA Obligations until the TLA Obligations are paid in full in cash as if such previous payment or repayment thereof had never occurred.

(b) As adequate protection of the interest of the TLB Agent and the TLB Lenders in the TLB Collateral, the TLB Agent and the TLB Lenders are hereby granted:

(i) payment of regularly scheduled paid-in-kind interest, calculated at the non-default rate under the TLB Agreement;

(ii) subject to the limitations set forth below, payment upon demand of all costs, expenses and other amounts payable under the terms of the TLB Loan Documents and all other reasonable out-of-pocket costs and expenses of the TLB Agent and TLB Lenders in accordance with the terms of the TLB Loan Documents (including, without limitation, the reasonable prepetition and postpetition fees and out-of-pocket costs and expenses of one lead counsel (which shall be Stroock & Stroock & Lavan LLP), one Delaware counsel (which shall be Pachulski, Stang, Ziehl & Jones LLP) and any other necessary local or regulatory counsel in connection with advising the TLB Agent and TLB Lenders), subject to receiving a written invoice therefor. None of such fees, costs, expenses or other amounts shall be subject to Court approval (subject to the limitations below) or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee, counsel to the TLA Agent, counsel to the DIP Agent, and counsel to the Committee; provided further, however, that such invoices may contain Redactions, and the provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. If any of the Debtors, U.S. Trustee, the TLA Agent, the DIP Agent, or the Committee (if any) objects to the reasonableness of the fees and expenses of any TLB Agent or the TLB Lenders, and such objection cannot be resolved within ten (10) days of receipt of such invoices, the Debtors, the U.S. Trustee, the TLA Agent, the DIP Agent, or the Committee (if any), as the case may be, shall file with the Court and serve on the TLB Agent and TLB Lenders a Reasonableness Fee Objection. Without limiting the foregoing, if the U.S. Trustee, the

TLA Agent, the DIP Agent, or the Committee (if any) objects to the Redactions and such objection cannot be resolved within ten (10) days of receipt of such invoices, the TLB Agent and TLB Lenders subject to such Redaction objection shall file with the Court and serve on counsel to the Debtors, the U.S. Trustee, counsel to the TLA Agent, counsel to the DIP Agent, and counsel to the Committee (if any) a Redaction Fee Objection. Any hearing on an objection or request, as applicable, regarding payment of any fees, costs, and expenses set forth in a professional fee invoice shall be limited to the propriety of the Redactions and the reasonableness of the particular items or categories of the fees, costs, and expenses, in each case which are the subject of such objection or request, as applicable. The Debtors shall pay in accordance with the terms and conditions of this Interim Order within fifteen (15) days after receipt of the applicable invoice (a) the full amount invoiced if no objection has been timely filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to which an objection has been timely filed. All such fees, costs, expenses and other amounts owed or payable to the TLB Agent and the TLB Lenders shall be secured by the TLB Liens and the TLB Replacement Liens (as defined below), and afforded all of the priorities and protections afforded to the TLB Obligations under this Interim Order and the TLB Loan Documents. Notwithstanding anything in this Paragraph to the contrary, any fees, costs and expenses of the TLB Agent and the TLB Lenders (including professional fees) in excess of the Approved Budget will be paid-in-kind and added to the TLB Obligations;

(iii) solely to the extent of the Diminution in Value of the interest of the TLB Agent and TLB Lenders in the TLB Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition

replacement liens on and security interests in the DIP Collateral, which Liens shall be (A) junior and subject to (x) the TLA Liens and the TLA Replacement Liens (on the same terms that the TLB Liens are subordinate and junior in priority to the TLA Liens as set forth in the Senior Intercreditor Agreement), (y) the liens in favor of the DIP Parties securing the DIP Obligations and (z) the Carve-Out and (B) senior to the TLC Liens, the TLC Replacement Liens, the TLD Liens and the TLD Replacement Liens (the “TLB Replacement Liens”);

(iv) solely to the extent of the Diminution in Value of the interest of the TLB Agent and TLB Lenders in the TLB Collateral from and after the Petition Date, superpriority administrative expense claims (the “TLB Superpriority Claims”) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors’ estates, which TLB Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided that the TLB Superpriority

Claims shall be subject to the payment in full in cash of the amounts due under (x) the TLA Superpriority Claims, (y) the DIP Superpriority Claims, and (z) the Carve-Out; and

(v) access to the Debtors' books and records and such financial reports as are provided to the DIP Agent.

In the event the TLB Obligations are irrevocably paid in full in cash and the Investigation Termination Date or the 363 Closing Date has passed without any Challenge filed against the TLB Agent or TLB Lenders or otherwise relating to the TLB Liens or TLB Obligations, the Debtors' obligation to provide the TLB Lenders and the TLB Agent the adequate protection pursuant to this Paragraph shall terminate on and as of the date of such payment, the Investigation Termination Date or the 363 Closing Date, whichever is later, without further notice to or action of any person. In the event that any portion of the TLB Obligations is ordered by the Bankruptcy Court to be reinstated or the proceeds of the repayment thereof are disgorged, for so long as such portion of the TLB Obligations remains outstanding, the adequate protection provided for in this Paragraph shall be reinstated with respect to such outstanding TLB Obligations until the TLB Obligations are paid in full in cash as if such previous payment or repayment thereof had never occurred.

(c) As adequate protection of the interest of the TLC Agent and the TLC Lenders in the TLC Collateral, the TLC Agent and the TLC Lenders are hereby granted:

(i) solely to the extent of the Diminution in Value of the interest of the TLC Agent and TLC Lenders in the TLC Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be junior and subject to (w) the TLA Liens and the TLA Replacement Liens, (x) the liens in

favor of the DIP Parties securing the DIP Obligations, (y) the TLB Liens and the TLB Replacement Liens and (z) the Carve-Out (the "TLC Replacement Liens"), in each case on the same terms that the TLC Liens and the TLD Liens are subordinate and junior in priority to the TLA Liens and the TLB Liens as set forth in the Junior Intercreditor Agreement; and

(ii) solely to the extent of the Diminution in Value of the interest of the TLC Agent and TLC Lenders in the TLC Collateral from and after the Petition Date, superpriority administrative expense claims (the "TLC Superpriority Claims") under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors' estates, which TLC Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided that the TLC Superpriority Claims shall be subject to the payment in full in cash of the amounts due under (w) the TLA Superpriority Claims, (x) the DIP Superpriority Claims, (y) the TLB Superpriority Claims and (z) the Carve-Out.

In the event the TLC Obligations are irrevocably paid in full in cash and the Investigation Termination Date or the 363 Closing Date has passed without any Challenge filed against the TLC Agent or TLC Lenders or otherwise relating to the TLC Liens or TLC Obligations, the Debtors' obligation to provide the TLC Lenders and the TLC Agent the adequate protection pursuant to this Paragraph shall terminate on and as of the date of such payment, the Investigation Termination Date or the 363 Closing Date, whichever is later, without further notice to or action of any person. In the event that any portion of the TLC Obligations is ordered by the Bankruptcy Court to be reinstated or the proceeds of the repayment thereof are disgorged, for so long as such portion of the TLC Obligations remains outstanding, the adequate protection provided for in this Paragraph shall be reinstated with respect to such outstanding TLC Obligations until the TLC Obligations are paid in full in cash as if such previous payment or repayment thereof had never occurred.

(d) As adequate protection of the interest of the TLD Agent and the TLD Lenders in the TLD Collateral, the TLD Agent and the TLD Lenders are hereby granted:

(i) solely to the extent of the Diminution in Value of the interest of the TLD Agent and TLD Lenders in the TLD Collateral from and after the Petition Date, continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which Liens shall be junior and subject to (v) the TLA Liens and the TLA Replacement Liens, (w) the liens in favor of the DIP Parties securing the DIP Obligations, (x) the TLB Liens and the TLB Replacement Liens (y) the TLC Liens and the TLC Replacement Liens and (z) the Carve-Out (the "TLD Replacement Liens") and together with the TLA Replacement Liens, the TLB Replacement Liens and the TLC Replacement Liens, the "Prepetition Lender

Replacement Liens”), in each case on the same terms that the TLC Liens and the TLD Liens are subordinate and junior in priority to the TLA Liens and the TLB Liens as set forth in the Junior Intercreditor Agreement and the TLD Liens are subordinate and junior in priority under that certain Intercreditor Agreement, dated October 3, 2013, by and among certain of the Debtors, the TLC Agent, the TLC Lenders, the TLD Agent, and the TLD Lenders; and

(ii) solely to the extent of the Diminution in Value of the interest of the TLD Agent and TLD Lenders in the TLD Collateral from and after the Petition Date, superpriority administrative expense claims (the “TLD Superpriority Claims” and together with the TLA Superpriority Claims, the TLB Superpriority Claims and the TLC Superpriority Claims, the “Prepetition Lender Superpriority Claims”) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors’ estates, which TLD Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided that the TLD Superpriority Claims shall be subject to

the payment in full in cash of the amounts due under (v) the TLA Superpriority Claims, (w) the DIP Superpriority Claims, (x) the TLB Superpriority Claims, (y) the TLC Superpriority Claims and (z) the Carve-Out.

In the event the TLD Obligations are irrevocably paid in full in cash and the Investigation Termination Date or the 363 Closing Date has passed without any Challenge filed against the TLD Agent or TLD Lenders or otherwise relating to the TLD Liens or TLD Obligations, the Debtors' obligation to provide the TLD Lenders and the TLD Agent the adequate protection pursuant to this Paragraph shall terminate on and as of the date of such payment, the Investigation Termination Date or the 363 Closing Date, whichever is later, without further notice to or action of any person. In the event that any portion of the TLD Obligations is ordered by the Bankruptcy Court to be reinstated or the proceeds of the repayment thereof are disgorged, for so long as such portion of the TLD Obligations remains outstanding, the adequate protection provided for in this Paragraph shall be reinstated with respect to such outstanding TLD Obligations until the TLD Obligations are paid in full in cash as if such previous payment or repayment thereof had never occurred.

12. Adequate Protection Reservation; Section 507(b) Reservation.

The receipt by the TLA Agent, the TLA Lenders, the TLB Agent, the TLB Lenders, the TLC Agent, the TLC Lenders, the TLD Agent and the TLD Lenders of the adequate protection provided pursuant to this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the TLA Agent, the TLA Lenders, the TLB Agent, the TLB Lenders, the TLC Agent, the TLC Lenders, the TLD Agent or the TLD Lenders to seek additional forms of adequate protection at any time, subject to the terms of the Intercreditor Agreements. Subject only to the Carve-Out described in Paragraph 13 hereof,

nothing contained herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in connection with any request for additional adequate protection by any party.

13. Carve-Out.

(a) As used in this Interim Order, the term “Carve-Out” shall mean, to the extent unencumbered funds are not immediately available on the date of delivery of a Carve-Out Trigger Notice (as defined below) to pay administrative expenses in full, proceeds of DIP Collateral to pay the following expenses:

- (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717;
- (ii) to the extent allowed by the Bankruptcy Court at any time, all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals or professional firms retained by the Debtors or the Committee (if any) pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code (other than ordinary course professionals) (collectively, the “Professionals”) at any time before or on the date of the delivery by the DIP Agent at the direction of the Required DIP Lenders (as defined in the DIP Credit Agreement) or the TLA Agent of a Carve-Out Trigger Notice (as defined below) up to an amount not to exceed the amount of such fees, disbursements, costs and expenses for each Professional (on a professional-by-professional, and not an aggregate basis) in the Approved Budget for the period prior to delivery of the Carve-Out Trigger Notice, whether such amounts are allowed by the Bankruptcy Court prior to or after delivery of such Carve-Out Trigger Notice (and including amounts incurred but not invoiced prior to the delivery of the Carve-Out Trigger Notice); provided, that, there shall be a dollar-for-dollar reduction of the Carve-Out for any unused retainers held by or on behalf of the Professionals as of the delivery of the Carve-Out Trigger Notice; and
- (iii) all unpaid fees, disbursements, costs and expenses incurred by the Professionals on or after the day following the delivery by the DIP Agent at the direction of the Required DIP Lenders or the TLA Agent of the Carve-Out Trigger Notice up to an amount not to exceed the amount of such fees, disbursements, costs and expenses for each Professional (on a professional-by-professional, and not an aggregate basis) in the Approved Budget for the relevant time period following the delivery of the Carve-Out Trigger Notice, to the extent allowed by the Bankruptcy Court at any time, in an aggregate amount not to exceed \$100,000; provided, that, without duplication of the above reduction for retainers, there shall be a dollar-for-dollar reduction of the Carve-Out for any unused retainers held by or on behalf of the Professionals as of the delivery of the Carve-Out Trigger Notice (such amount set forth in clause (iii), the “Post-Carve-Out Trigger Notice”

Cap”, and, together with such amounts set forth in clauses (i) and (ii) above, the “Carve-Out”).

(b) As used herein, the term “Carve-Out Trigger Notice” means a written notice provided by the DIP Agent (at the direction of the Required DIP Lenders), or the TLA Agent, to the Debtors, the TLA Agent (if not delivering the Carve-Out Trigger Notice), the DIP Agent (if not delivering the Carve-Out Trigger Notice), the U.S. Trustee and any Committee that the Carve-Out is invoked, which notice can be delivered only by the DIP Agent upon the occurrence of an Event of Default (as defined in the DIP Credit Agreement), by the TLA Agent upon a TLA Event of Default (as defined below), or by either if the Final Maturity Date has occurred. Notwithstanding anything to the contrary contained in this Interim Order or in any DIP Documents, the liens and claims granted to any of the DIP Parties or any of the Prepetition Secured Parties (including, without limitation, the DIP Liens, DIP Superpriority Claims, Prepetition Lender Superpriority Claims, Prepetition Lender Replacement Liens, Prepetition Secured Obligations, and Prepetition Liens) under, pursuant to or in connection with the DIP Facility, any DIP Document, this Interim Order, or any Prepetition Credit Document shall be subject to the payment in full in cash of the amounts due under the Carve-Out. The Carve-Out shall be paid from the following sources in the following order: first, from the Debtors’ unencumbered funds; second, from proceeds of the DIP Collateral that do not constitute TLA Collateral; and, third, from proceeds of the TLA Collateral.

(c) After receipt of the Carve-Out Trigger Notice, the Debtors shall provide notice by email and facsimile to all Professionals, at the email addresses and facsimile numbers set forth in each Professional’s notice of appearance filed with the Bankruptcy Court (or, if there is no such notice of appearance, at such Professional’s last known email address and facsimile number) and by filing a notice thereof on the docket of the Bankruptcy Court within

two (2) Business Days after the Debtors' receipt of a Carve-Out Trigger Notice informing them that such Carve-Out Trigger Notice has been received and further advising them that the Debtors' ability to pay such Professionals is subject to and limited by the Carve-Out.

(d) Notwithstanding the foregoing, so long as a Carve-Out Trigger Notice has not been delivered in accordance with this Interim Order: (i) the Debtors shall be permitted to pay administrative expenses of Professionals allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may become due and payable, including on an interim basis, solely to the extent set forth in the DIP Credit Agreement and the Approved Budget (for the avoidance of doubt, on a professional-by-professional, and not an aggregate basis); and (ii) such payments shall not reduce, or be deemed to reduce, the Carve-Out.

(e) Nothing contained herein is intended to constitute, nor should be construed as consent to, the allowance of any Professional's fees, costs or expenses by any party and shall not affect the right of the Debtors, TLA Agent, TLB Agent, DIP Parties, Committee (if any), U.S. Trustee, or any other party-in-interest to object to the allowance and payment of any amounts incurred or requested.

14. Limitation on Use of Cash Collateral and DIP Facility Proceeds.

Notwithstanding anything herein to the contrary, no portion of the Carve-Out, DIP Facility, DIP Collateral, Prepetition Collateral or Cash Collateral shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtors or any Committee, in connection with any of the following: (i) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Parties or Prepetition Secured Parties, and each of their respective successors, assigns, affiliates,

parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof) (each, a “Loan Party Claim”), including, without limitation, (a) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Superpriority Claims or security interests and liens of the DIP Parties in respect thereof, (b) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations or Prepetition Liens, (c) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code against the Prepetition Secured Parties, (d) investigating or asserting any so-called “lender liability” claims and causes of action against the Prepetition Secured Parties or the DIP Parties and (e) investigating or asserting any action seeking to invalidate, set aside, avoid or (other than as contemplated by the Intercreditor Agreements, this Interim Order, and Bankruptcy Code section 510(a)) subordinate, in whole or in part, the Prepetition Credit Agreements or the DIP Loans; (ii) the assertion of any claims or causes of action against the DIP Parties or the Prepetition Secured Parties, including, without limitation, claims or actions to hinder or delay the assertions, enforcement or realization on the DIP Collateral or the liens securing the Prepetition Secured Obligations in accordance with this Interim Order (including attempting to stay the exercise of any right or remedy described in clause (e), clause (f) or clause (g) of Paragraph 27 of this Interim Order); (iii) seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP

Agent, the DIP Lenders or the Prepetition Secured Parties hereunder or under the DIP Documents, the TLA Loan Documents or the TLB Loan Documents, in each of the foregoing cases without such applicable parties' prior written consent; (iv) the payment of any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by the TLA Agent, the TLB Agent and an order of the Bankruptcy Court and (y) in accordance with the DIP Credit Agreement; or (v) any purpose that is prohibited under the Bankruptcy Code; provided, however, that no more than \$50,000 of the proceeds of the DIP Facility or any proceeds of the DIP Collateral or the Cash Collateral may be used by the Committee (if any) to investigate any Loan Party Claim.

15. Reservation of Certain Third Party Rights. The Committee (if any) or any other party-in-interest with standing (other than the Debtors) shall have a maximum of sixty (60) calendar days from the date of the Committee's appointment (if any), but in no event later than seventy-five (75) calendar days from entry of this Interim Order (the "Investigation Termination Date") to commence an appropriate contested matter or adversary proceeding (a "Challenge") asserting any Loan Party Claim. Notwithstanding the foregoing, subject to entry of a Final Order, from and after consummation of any sale transaction pursuant to section 363 of the Bankruptcy Code (such date of consummation, the "363 Closing Date"), no person or entity, including the Committee, any chapter 11 trustee appointed in these Chapter 11 Cases or any chapter 7 trustee in any chapter 7 case of the Debtors, shall be entitled to commence any Challenge asserting any Loan Party Claim. If a Challenge is not filed on or before the Investigation Termination Date (or such other later date as extended by the written consent of the applicable Prepetition Agent at the direction of the applicable Prepetition Lenders or the DIP Agent at the direction of the Required DIP Lenders) or the 363 Closing Date, then: (a) the

agreements, acknowledgements and stipulations contained in Paragraph C of this Interim Order shall be irrevocably binding on the Debtors, any Committee, all creditors of the Debtors, and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, including any chapter 11 trustee or chapter 7 trustee appointed in the Chapter 11 Cases or any subsequent chapter 7 cases, without further action by any party or this Court, and the Debtors, any Committee, all creditors of the Debtors, and any other party-in-interest and any and all successors-in-interest as to any of the foregoing, including any chapter 11 trustee or chapter 7 trustee appointed in the Chapter 11 Cases or any subsequent chapter 7 cases, shall thereafter be forever barred from bringing any Challenge with respect thereto; (b) the Prepetition Liens of the Prepetition Secured Parties shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the Prepetition Secured Obligations shall be deemed to be finally allowed claims for all purposes against each of the Debtors, including in any subsequent chapter 7 cases, in the amounts set forth in Paragraph C, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (d) the Debtors shall be deemed to have released, waived and discharged the Prepetition Secured Parties (whether in their prepetition or postpetition capacity), together with each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Secured Obligations. Notwithstanding anything to the contrary herein: (x) if any such Challenge

is timely commenced, the stipulations contained in Paragraph C of this Interim Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge in connection therewith and then only with respect to the stipulations that are subject to the Challenge and not to any stipulations not subject to the Challenge) except to the extent that such stipulations are successfully challenged in such Challenge; and (y) the Prepetition Secured Parties and the DIP Parties reserve all of their rights to contest on any grounds any Challenge and preserve any and all of their rights to appeal and stay any orders issued in connection with a successful Challenge. For the avoidance of doubt, nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtors or their estates.

16. Landlord Agreements. Subject to entry of the Final Order, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtors to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed unenforceable and shall have no force and effect with respect to the transactions granting post-petition liens in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders or Prepetition Lenders in accordance with the terms of the DIP Documents, this Interim Order or the Final Order.

17. Bankruptcy Code Section 506(c) Waiver. Without limiting the Carve-Out, subject to the entry of the Final Order, the Debtors shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or

enhancement of, or realization by the DIP Parties or Prepetition Secured Parties upon, the DIP Collateral or the Prepetition Collateral (as applicable) and no costs or expenses of administration that have been or may be incurred in any of the Chapter 11 Cases or any subsequent chapter 7 cases at any time shall be charged against the DIP Agent, any of the DIP Lenders, the Prepetition Secured Parties or any of their respective claims or liens (including any claims or liens granted pursuant to this Interim Order).

18. No Marshaling/Application of Proceeds. In no event shall the DIP Parties or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable), and all proceeds thereof shall be received and used in accordance with this Interim Order.

19. Section 552(b). Upon entry of the Final Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) shall not apply to the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral.

20. Right to Credit Bid. The DIP Agent (at the direction of the Required DIP Lenders) and each Prepetition Agent (subject to obtaining any required consents under the applicable Prepetition Credit Document) shall have the right to “credit bid” up to the full allowed amount of its respective claims in connection with any sale of all or any portion of the DIP Collateral or Prepetition Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to

confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

21. Disposition of Collateral; Application of Proceeds. Except as expressly permitted by the DIP Credit Agreement, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or the Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent (subject to the consent of the Required DIP Lenders) and the TLA Agent and, subject to the terms and conditions of the Prepetition Credit Documents, the other Prepetition Agents (subject to obtaining any required consents of the applicable Prepetition Lenders under the applicable Prepetition Credit Documents) (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent or any Prepetition Agent, as applicable, or from any order of this Court). Notwithstanding anything otherwise provided herein, and except as expressly permitted by the DIP Documents, upon the sale of any, all or substantially all of the collateral secured by the TLA Liens and the TLA Replacement Liens, the Debtors shall use cash in an amount equal to 100% of any net cash proceeds of such sale to immediately satisfy (v) any outstanding TLA Obligations to the extent required by the TLA Loan Documents, (w) following the payment in full of the TLA Obligations, to immediately satisfy any outstanding DIP Obligations to the extent required by the DIP Documents, (x) following the payment in full of the DIP Obligations, to immediately satisfy any outstanding TLB Obligations to the extent required by the TLB Loan Documents, (y) following the payment in full of the TLB Obligations, to immediately satisfy any outstanding TLC Obligations to the extent required by the TLC Loan Documents and (z) following the payment in full of the TLC Obligations, to immediately satisfy any outstanding TLD Obligations to the extent required by the TLD Loan Documents; provided,

however, that, notwithstanding the foregoing, the net cash proceeds of any Lease Collateral shall be used to immediately satisfy any outstanding DIP Obligations to the extent required by the DIP Documents until the payment in full of the DIP Obligations, and thereafter shall be used to satisfy any outstanding TLA Obligations and thereafter any outstanding TLB Obligations. Notwithstanding the sale of any, all or substantially all of the Prepetition Collateral or the DIP Collateral, each of the Prepetition Agents and the DIP Agent shall retain their Prepetition Liens, Prepetition Lender Replacement Liens, and DIP Liens, as applicable, in the net sale proceeds of the Prepetition Collateral and DIP Collateral, as applicable, until the net proceeds of such sale are applied in accordance with the priorities set forth in this Paragraph 21.

22. Proceeds of Subsequent Financing. If at any time prior to the repayment in full of the DIP Obligations, any of the Debtors or any trustee obtains credit or incurs debt pursuant to section 364(b), 364(c), or 364(d) of the Bankruptcy Code, whether or not in violation of the DIP Documents or this Interim Order, then all of the cash proceeds derived from such credit or debt shall immediately be used to satisfy any outstanding TLA Obligations secured by the TLA Liens and TLA Replacement Liens with any excess thereafter turned over to the DIP Agent and distributed in accordance with the terms of the DIP Documents; provided, however, that in the event of a refinancing solely of the DIP Obligations, the cash proceeds derived from such credit or debt may be used solely to satisfy any outstanding DIP Obligations.

23. Discharge Waiver. The DIP Obligations and the TLA Obligations shall not be discharged by the entry of an order confirming any chapter 11 plan, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such DIP Obligations and such TLA Obligations have been indefeasibly paid in full in cash on or before the effective date of a confirmed chapter 11 plan. The Debtors shall not propose or support any chapter 11 plan, 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 or prior to the earlier of the effective date of such chapter 11 plan or sale or the Final Maturity Date, of all DIP Obligations and the TLA Obligations unless the DIP Agent, with consent of the Required DIP Lenders (as contemplated under the DIP Credit Agreement), or unless the TLA Agent, as applicable, shall have otherwise consented in writing to such plan or sale.

24. Restrictions on Granting Postpetition Liens. Other than the Carve-Out or as otherwise provided in this Interim Order or the DIP Documents (solely with respect to the DIP Facility), no claim or lien having a priority superior to or *pari passu* with those granted to the TLA Agent and TLA Lenders or by this Interim Order or the DIP Documents to the DIP Parties shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases or any subsequent chapter 7 cases, and the Debtors will not grant, and irrevocably waive any right to grant, any such mortgages, security interests or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to sections 105, 364(c) or 364(d) of the Bankruptcy Code or otherwise, while (i) any portion of the DIP Facility, any DIP Loans, any other DIP Obligations, or any TLA Obligations are outstanding or (ii) the DIP Lenders have any Commitment under the DIP Credit Agreement.

25. Automatic Effectiveness of Liens. The DIP Liens and Prepetition Lender Replacement Liens shall not be subject to a Challenge and shall attach and become valid, perfected, binding, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors, the DIP Parties or any of the applicable Prepetition Secured Parties, respectively, and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, security agreements, vehicle lien

applications, mortgages, filings with a governmental unit (including, without limitation, the U.S. Patent and Trademark Office or the Library of Congress), or other documents or the taking of any other actions. If the DIP Agent, the TLA Agent, the TLB Agent, the TLC Agent or the TLD Agent hereafter requests that the Debtors execute and deliver to the DIP Agent, the TLA Agent, the TLB Agent, the TLC Agent or the TLD Agent, as applicable, financing statements, security agreements, pledge agreements, control agreements, collateral assignments, mortgages, or other instruments and documents considered by the DIP Agent, the TLA Agent, the TLB Agent, the TLC Agent or the TLD Agent, as applicable, to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or Prepetition Lender Replacement Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, pledge agreements, control agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Agent, the TLA Agent, the TLB Agent, the TLC Agent or the TLD Agent, as applicable, is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the Petition Date; provided, however, no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and the Prepetition Lender Replacement Liens. The DIP Agent, the TLA Agent, the TLB Agent, the TLC Agent and the TLD Agent, as applicable, each in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to, or in lieu of, such financing statements, notices of liens or similar statements.

26. TLA Buyout Right. The TLA Agent and the TLA Lenders, at any time and in their sole and absolute discretion, shall have the option (the “Purchase Option”) to purchase from the DIP Lenders all (but not less than all) of the DIP Loan by giving written notice (a “Purchase Notice”) to the DIP Agent. The Purchase Notice shall be irrevocable once delivered. On the date specified by the TLA Agent in the Purchase Notice (which shall not be less than three (3) Business Days nor more than ten (10) Business Days after the receipt by the DIP Agent of the Purchase Notice), the DIP Lenders shall sell to the TLA Agent and the TLA Lenders, and the TLA Agent and the TLA Lenders who have elected to participate in such purchase shall purchase from the DIP Lenders, the DIP Loan at par plus all accrued and unpaid interest and fees under the DIP Loan. In connection with such Purchase Option, the DIP Agent will resign effective upon the consummation of the Purchase Option and all documented accrued and unpaid costs and expenses of the DIP Agent shall be paid at such time. Upon the consummation of the Purchase Option, the TLA Agent and such TLA Lenders automatically shall have all of the rights, benefits and privileges as the DIP Parties have under this Interim Order, including the benefit of all of the findings in favor of the DIP Parties under this Interim Order, without the necessity of any further order of the Bankruptcy Court as if the TLA Agent and such TLA Lenders were the DIP Agent and the DIP Lenders under this Interim Order at all times from and following the entry thereof.

27. Automatic Stay; Rights and Remedies Upon Event of Default. Subject to the following sentences of this Paragraph, the automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies and provisions of this Interim Order, the DIP Documents, and the TLA Loan Documents in each case without further notice, motion, application to, order of, or hearing

before, this Court. Subject to the provisions of the DIP Credit Agreement and the TLA Loan Documents, as applicable, and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Parties, the TLA Agent, and the TLA Lenders (or any of their respective agents), as applicable, to exercise, upon the occurrence and during the continuance of, in the case of the DIP Agent and the DIP Lenders, any Event of Default under the DIP Credit Agreement or, in the case of the TLA Agent and the TLA Lenders, any TLA Event of Default (as defined below), as applicable, all rights and remedies provided for in the DIP Documents and the TLA Loan Documents, as applicable, and to take any or all of the following actions without further notice, motion or application to, order of or hearing before, this Court: (a) immediately terminate the Debtors' rights, if any, under this Interim Order or the DIP Credit Agreement to use Cash Collateral, except to the extent such cash may be used for the Carve-Out; (b) in the case of the DIP Agent and the DIP Lenders, cease making any DIP Loans to the Debtors; (c) in the case of the DIP Agent and the DIP Lenders, declare the Individual Commitments of each DIP Lender to make DIP Loans to be terminated, whereupon such Individual Commitments and obligation shall be terminated; (d)(1) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other DIP Obligations, or (2) declare the unpaid principal amount of all outstanding TLA Obligations, all interest accrued and unpaid thereon, and all other TLA Obligations, in each case to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Debtors; (e) freeze monies or balances in the Debtors' accounts; (f) immediately set off any and all amounts in accounts maintained by the Debtors with the DIP Agent, any of the DIP Lenders, the TLA Agent, or any of the TLA Lenders (or any of their respective agents), as

applicable, against the DIP Obligations and the TLA Obligations, as applicable, enforce all rights and remedies against the DIP Collateral in the possession of any of the DIP Lenders and the TLA Lenders, as applicable, for application towards the DIP Obligations and the TLA Obligations, as applicable, and otherwise proceed to protect, or enforce all rights and remedies of the DIP Parties, the TLA Agent, and the TLA Lenders under the DIP Credit Agreement, any of the other DIP Documents, or the TLA Loan Documents, as applicable, or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in the DIP Credit Agreement, the other DIP Documents, or the TLA Loan Documents, as applicable, or any instrument pursuant to which the DIP Obligations and TLA Obligations, as applicable, are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the DIP Parties, the TLA Agent, and the TLA Lenders, as applicable; and (g) take any other actions or exercise any other rights or remedies permitted under this Interim Order or the Final Order, as applicable, the DIP Documents and the TLA Loan Documents, as applicable, or applicable law to effectuate the repayment of the DIP Obligations and the TLA Obligations, as applicable; provided, however, that prior to the exercise of any right or remedy described in clauses (e), (f) or (g) of this Paragraph, the DIP Agent and the TLA Agent, as applicable, shall be required to provide five (5) Business Days' written notice to the Debtors (with a copy to their bankruptcy counsel), counsel to any Committee, counsel to the DIP Parties, counsel to the Prepetition Secured Parties and the U.S. Trustee. No party in interest shall have the right to contest the enforcement of the rights and remedies set forth in this Interim Order, the DIP Documents, or the TLA Loan Documents, as applicable, on any basis other than an assertion that no Event of Default or TLA Event of Default, as applicable,

thereunder has occurred and is continuing, and, except with respect to such an assertion, no party-in-interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of this Interim Order, the DIP Documents, or the TLA Loan Documents, as applicable. Unless the Court determines during such five (5) Business Day notice period that such Event of Default or TLA Event of Default, as applicable, has not occurred and/or is not continuing, the automatic stay, as to the DIP Parties, the TLA Agent, and the TLA Lenders, as applicable, shall automatically be terminated at the end of such notice period, without further notice or order, and, upon expiration of such notice period, (x) the DIP Parties shall be permitted to exercise all rights and remedies set forth in this Interim Order, the DIP Credit Agreement and the other DIP Documents, as applicable, and as otherwise available at law, and (y) the TLA Agent and the TLA Lenders, as applicable, shall be permitted to exercise all rights and remedies set forth in this Interim Order and the TLA Loan Documents, as applicable, and as otherwise available at law, in each case including, but not limited to, the right to foreclose on all or any portion of the DIP Collateral, collect accounts receivable, and apply the proceeds thereof to the DIP Obligations and the TLA Obligations, as applicable, and occupy the Debtors' premises to sell or otherwise dispose of the DIP Collateral, without further notice, motion or application to, order of or hearing before, this Court; provided, however, that, notwithstanding the foregoing, until and unless the TLA Obligations are irrevocably paid in full, and notwithstanding anything in this Interim Order or the DIP Documents to the contrary, unless the TLA Agent and the TLA Lenders provide their prior written consent, the DIP Agent and the DIP Lenders may not exercise any rights or remedies described in clauses (e), (f) or (g) of this Paragraph with respect to the DIP Collateral other than with respect to the Lease Collateral; provided, further, that notwithstanding anything

in this Interim Order to the contrary, following the exercise by the DIP Agent or the DIP Lenders of any of their respective rights or remedies as set forth in this Paragraph 27 or under the DIP Documents or applicable law in respect of the DIP Collateral with the prior written consent of the TLA Agent and the TLA Lenders, to the extent required above, no collateral, or proceeds thereof, that is subject to the Prepetition Liens or Prepetition Lender Replacement Liens (other than the Lease Collateral), shall be used to pay any DIP Obligations until after the TLA Obligations have been irrevocably paid in full. The rights and remedies of the DIP Parties, the TLA Agent, and the TLA Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Parties, the TLA Agent, or the TLA Lenders may have under the DIP Documents, the TLA Loan Documents, or otherwise. The Debtors, any Committee and other parties-in-interest shall cooperate with the DIP Parties, the TLA Agent, and the TLA Lenders, as applicable, in their exercise of their rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 27 of this Interim Order and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder. The delay or failure to exercise rights and remedies under the applicable DIP Documents, TLA Loan Documents, or this Interim Order by the DIP Agent, the DIP Lenders, the TLA Agent, or the TLA Lenders, as applicable, shall not constitute a waiver of the applicable DIP Agent's, DIP Lender's, TLA Agent's, or TLA Lender's rights hereunder, thereunder or otherwise, unless such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents and this Interim Order or TLA Loan Documents, as applicable. Upon the DIP Parties becoming entitled to exercise (and exercising) any rights or remedies described in clauses (e), (f) or (g) of this Paragraph with respect to the DIP

Collateral (other than the Lease Collateral), the TLA Agent and the TLA Lenders shall automatically have relief from the automatic stay to enforce all of their rights and remedies, including, without limitation, all of their potential rights and remedies specified above, without the need for any further order of the Bankruptcy Court, whether or not a TLA Event of Default has occurred. The occurrence of any one or more of the following is referred to herein as a “TLA Event of Default”:

(1) the breach of, or failure to comply with, any terms (including defined terms) or provisions, or any rights, benefits, privileges or remedies of the TLA Agent and/or the TLA Lenders, in each case, under this Interim Order, the Senior Intercreditor Agreement, any TLA Loan Document, the DIP Credit Agreement or any other DIP Document, which concern or relate to (i) any DIP Collateral and/or any TLA Collateral, as applicable, or (ii) the priority, validity, enforceability, scope and any other matters with respect to any of the TLA Liens, the TLA Replacement Liens and the TLA Superpriority Claims, as applicable; or

(2) the failure to pay any amounts to the TLA Agent and the TLA Lenders required to be paid pursuant to paragraph 11(a) of this Interim Order within five (5) days after such payment is otherwise due under the TLA Loan Documents or, in the case of fees, costs and expenses, within five (5) days after such payment is due under paragraph 11(a)(ii); or

(3) the breach of, or failure to comply with, any consent, or approval rights, or any other rights, benefits, privileges or remedies of the TLA Agent and/or any TLA Lender set forth in any terms (including any defined terms) or provisions under this Interim Order, the DIP Agreement or any other DIP Document to the extent afforded hereunder or thereunder, as the case may be, including, but not limited to, with respect to whether a budget is an Approved Budget, with respect to increasing the amount of the Commitment above \$4,000,000.00, or with respect to any future order of this Court concerning or relating to the Chapter 11 Cases (including, without limitation, the Final Order, any bidding procedures order, and any sale order); or

(4) the breach of, failure to comply with, or extension of (without the prior written consent of the TLA Lenders), the Availability Period, the Final Maturity Date, the Stated Maturity Date or any of the milestones set forth on Schedule 7.01(s) of the DIP Credit Agreement; or

(5) the use of proceeds of the DIP Facility and Cash Collateral for any purpose not covered by a line item set forth in the Approved Budget; or

(6) the occurrence of any “Event of Default” under Sections 9.01(h), (k) - (r), and (t)-(x) of the DIP Credit Agreement;

provided that, notwithstanding the foregoing, no TLA Event of Default will include any Operating Disbursements Variance or any Receipts Variance.

28. Maintenance of DIP Collateral. Unless the DIP Agent (at the direction of the Required DIP Lenders) and TLA Agent may otherwise consent in writing, until (x) the indefeasible payment in full or otherwise acceptable satisfaction of (i) all adequate protection obligations owing to the TLA Agent, TLA Lenders, the DIP Agent and the DIP Lenders, (ii) all TLA Obligations and (iii) all DIP Obligations and (y) the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facilities, the Debtors shall (a) insure the DIP Collateral as required under the DIP Facilities and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court in accordance with the DIP Documents with the consent of the DIP Parties, the TLA Agent and the TLB Agent.

29. Access to Collateral; No Landlord's Liens. Subject to applicable state law, and without limiting any other rights or remedies of the DIP Agent, for the benefit of the DIP Lenders, and the TLA Agent, for the benefit of the TLA Lenders, contained in this Interim Order, the DIP Documents, the TLA Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, the TLA Loan Documents, and this Interim Order, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the DIP Documents or a TLA Event of Default has occurred and is continuing, as applicable, the DIP Agent or the TLA Agent, as applicable, may, subject to any separate agreement by and between such landlord and the DIP Agent or the TLA Agent, as applicable (a "Separate Agreement"), enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and, subject to any Separate Agreement or as permitted by applicable law, shall be entitled to all of the Debtors'

rights and privileges as lessee under such lease without interference from such landlord; provided, however, that, subject to any such Separate Agreement, the DIP Agent or the TLA Agent, as applicable, shall only pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP Agent or the TLA Agent, as applicable, calculated on a per diem basis. Nothing herein shall require the DIP Agent or the TLA Agent, as applicable, to assume any lease as a condition to the rights afforded to the DIP Agent or the TLA Agent, as applicable, in this paragraph.

30. Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Debtors, the DIP Parties, the Prepetition Secured Parties and their respective successors and assigns, including without limitation, any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Interim Order.

31. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any chapter 11 plan in any of the Chapter 11 Cases; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Interim Order as well as the DIP Superpriority Claims and the DIP Liens in the DIP Collateral granted pursuant to this Interim Order and the DIP Documents and the TLA Replacement Liens and TLA Superpriority Claims (and with respect to the entry of any order as set forth in clause (ii) or (iii) of this Paragraph, the TLB Replacement Liens, TLB Superpriority Claims, TLC Replacement Liens, TLC Superpriority Claims, TLD Replacement Liens and TLD Superpriority Claims) shall continue in full force and effect notwithstanding the entry of any such order. Such claims and

liens shall maintain their priority as provided by this Interim Order and the DIP Documents, as applicable, and to the maximum extent permitted by law, until all of the DIP Obligations and TLA Obligations are indefeasibly paid in full in cash and discharged or otherwise treated under a chapter 11 plan in accordance with the terms of Paragraph 23 hereof. In no event shall any chapter 11 plan be allowed to alter the terms of repayment of (x) any of the DIP Obligations from those set forth in the DIP Documents unless agreed to by and among the Debtors and the DIP Parties or (y) any of the TLA Obligations from those set forth in the TLA Loan Documents unless agreed to by and among the Debtors and the TLA Agent and TLA Lenders.

32. Modifications of DIP Documents. Subject to the limitations set forth below, the Debtors and the DIP Parties are hereby authorized to implement, in accordance with the terms of the DIP Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders or the DIP Agent) of the DIP Documents without further notice, motion or application to, order of or hearing before, this Court. Any material modification or amendment to the DIP Documents shall only be permitted pursuant to an order of this Court, after being submitted to this Court upon notice to counsel for any Committee, the U.S. Trustee and the Prepetition Agents; provided, that any forbearance from, or waiver of, (a) a breach by the Debtors of a covenant, representation or any other agreement or (b) a default or an Event of Default, in each case under the DIP Documents, shall not require an order of this Court; provided, further, that, (i) no term (including any defined term) or provision under the DIP Documents the breach of which would constitute a TLA Event of Default, may be amended or otherwise modified (including by waiver or consent), by any DIP Agent, any of the DIP Lenders and/or any of the Debtors, in each case under this clause (i) without the prior written consent of the TLA Agent and the TLA Lenders, and (ii) none of the

DIP Agents or the DIP Lenders may forbear with respect to, or waive (including by consent), any TLA Event of Default or any term (including any defined term) or provision which if breached would constitute a TLA Event of Default, in each case, under this clause (ii), without the prior written consent of the TLA Agent and the TLA Lenders.

33. Insurance Policies. Upon entry of this Interim Order, on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral: (i) the DIP Agent, the DIP Lenders, the TLA Agent, and the TLA Lenders shall be, and shall be deemed to be, without any further action by or notice to any person, named as additional insureds; and (ii) the DIP Agent, on behalf of the DIP Lenders, and the TLA Agent, on behalf of the TLA Lenders, shall be, and shall be deemed to be, without any further action by or notice to any person, named as a loss payee. The Debtors are authorized and directed to take any actions necessary to have the DIP Agent, the DIP Lenders, the TLA Agent, and the TLA Lenders (as applicable) be added as an additional insured and loss payee on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

34. Protection Under Section 364(e) of the Bankruptcy Code. The DIP Parties and the Prepetition Secured Parties have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith. Based on the record of these Chapter 11 Cases, and in accordance with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect the (i) validity of any DIP Obligations owing to the DIP Parties, or adequate protection obligations owing to the applicable Prepetition Secured Party, incurred prior to the actual receipt by the DIP Agent, TLA Agent or TLB Agent, as applicable, of written notice of such reversal, modification, vacation or stay, or (ii) validity or

enforceability of any DIP Loans or other advances previously made or any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations owing to the DIP Agent or the DIP Lenders or any adequate protection obligations owing to the applicable Prepetition Secured Party. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral, incurrence of DIP Obligations or incurrence of adequate protection obligations by the Debtors prior to the actual receipt by the DIP Agent, the TLA Agent or the TLB Agent, as applicable, of written notice of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Parties and the applicable Prepetition Secured Party shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and adequate protection obligations.

35. Effect of Dismissal or Conversion of Chapter 11 Cases. If the Chapter 11 Cases are dismissed or converted, then such dismissal or conversion of the Chapter 11 Cases shall not affect the rights of the DIP Parties and the Prepetition Secured Parties under their respective DIP Documents, Prepetition Credit Documents, or this Interim Order, and all of the respective rights and remedies thereunder of the DIP Parties and the Prepetition Secured Parties shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed or converted. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that: (i) the DIP Liens and DIP Superpriority Claims granted to and conferred upon the DIP Parties and the protections afforded to the DIP Parties pursuant to this Interim Order and the DIP Documents shall continue in full force and effect and shall maintain their priorities as provided in this

Interim Order until all DIP Obligations shall have been paid and satisfied in full in cash (and that such DIP Liens, DIP Superpriority Claims and other protections shall, notwithstanding such dismissal, remain binding on all interested parties), in each case on a junior basis to the extent set forth in this Interim Order to those TLA Liens, TLA Replacement Liens and TLA Superpriority Claims granted to and conferred upon the TLA Secured Parties; (ii) all Prepetition Liens, Prepetition Lender Replacement Liens and Prepetition Lender Superpriority Claims granted to and conferred upon the applicable Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Prepetition Secured Obligations shall have been paid and satisfied in full in cash (and that such Prepetition Lender Replacement Liens and Prepetition Lender Superpriority Claims shall, notwithstanding such dismissal, remain binding on all interested parties); and (iii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, Prepetition Lender Replacement Liens, DIP Superpriority Claims, and Prepetition Lender Superpriority Claims referred to herein.

36. Proofs of Claim. Notwithstanding any order entered by the Bankruptcy Court in relation to the establishment of a bar date in the Chapter 11 Cases to the contrary, or otherwise, the DIP Parties and the Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases for any claim allowed herein. The provisions set forth in this Paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest, including, without limitation, the numerosity requirements set forth in section 1126 of the Bankruptcy Code.

37. Rights of Access and Information. The representatives, advisors, consultants, agents and/or employees of the DIP Agent, the DIP Lenders, the TLA Agent, the TLB Agent, the TLA Lenders and the TLB Lenders shall be afforded reasonable access to the Debtors' premises during normal business hours and without unreasonable interference with the proper operation of the Debtors' businesses and their books and records in accordance with this Interim Order, the DIP Documents and the Prepetition Credit Documents and the Debtors shall reasonably cooperate with, consult with, and provide to such persons all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of any of the Debtors.

38. No Impact on Certain Contracts or Transactions. No rights of any entity in connection with a contract or transaction of the kind listed in sections 555, 556, 559, 560 or 561 of the Bankruptcy Code, whatever they might or might not be, are affected by the provisions of this Interim Order. Except as expressly otherwise set forth herein, nothing in this Interim Order shall be construed to convey on any DIP Lender or any Prepetition Secured Party any consent, voting or other rights beyond those (if any) set forth in the DIP Documents or the Prepetition Credit Documents, as applicable. The DIP Obligations and DIP Facility collectively constitute the "DIP Financing" (as defined in the Junior Intercreditor Agreement) and as such shall be subject to the applicable operative terms of the Junior Intercreditor Agreement.

39. 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 other than the DIP Agent, the DIP Lenders and the Prepetition Secured Parties.

40. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for all obligations hereunder, including without limitation, the DIP Superpriority Claims and the Prepetition Lenders Superpriority Claims and in accordance with the terms of the DIP Facility and the DIP Documents.

41. Limitation on Liability. Subject to the entry of the Final Order, in determining to make extensions of credit under the DIP Facility, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order (or any Final Order), the DIP Documents, or the Prepetition Credit Documents, as applicable, none of the DIP Agent, the DIP Lenders, TLA Agent, the TLA Lenders, the TLB Agent, the TLB Lenders, or any successor of any of the foregoing, shall be deemed to be in control of the operations of the Debtors or any affiliate (as defined in section 101(2) of the Bankruptcy Code) of the Debtors, or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or any affiliate of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order, the DIP Documents or the Prepetition Credit Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, TLA Agent, the TLA Lenders, the TLB Agent, the TLB Lenders, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any affiliate of the Debtors.

42. Findings of Fact and Conclusions of Law. This Interim Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

43. Choice of Law; Jurisdiction. The DIP Facility and DIP Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or DIP Documents.

44. Controlling Effect of Interim Order. To the extent any provision of this Interim Order conflicts with any provision of the Motion or any DIP Document, the provisions of this Interim Order shall control.

45. Objections. Objections to the entry of the Final Order shall be in writing and shall be filed with the Clerk of this Court, on or before 4:00 p.m. (prevailing Eastern time) on October [\_\_\_], 2016, with a copy served upon: (i) counsel to the Debtors, Morgan, Lewis &

Bockius LLP, 101 Park Avenue, New York, NY 10178 (Attn: Neil E. Herman, Esq., Patricia F. Brennan, Esq. and James O. Moore, Esq.) and Young Conaway Stargatt & Taylor, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Michael Nestor, Esq. and Kenneth Enos, Esq.); (ii) counsel to the DIP Lenders, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038 (Attn: Jayme T. Goldstein, Esq. and Daniel P. Ginsberg, Esq.) and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, Wilmington, DE 19801 (Attn: Laura Davis Jones, Esq.); (iii) counsel to the TLA Agent, (a) Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39<sup>th</sup> Floor, Los Angeles, CA 90067 (Attn: Michael L. Tuchin, Esq. and David M. Guess, Esq.) and (b) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.); (iv) counsel to be selected by the Committee (if any) upon its formation if selected by such date, and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Juliet Sarkessian, Esq.).

46. Final Hearing. A final hearing on the Motion shall be heard before this Court on October [\_\_\_], 2016 at [\_\_\_\_\_] a.m. in Courtroom [\_\_\_\_\_] at the United States Bankruptcy Court, 824 Market Street, Wilmington, DE 19801.

Dated: \_\_\_, 2016.

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Christopher S. Sontchi  
United States Bankruptcy Judge

**EXHIBIT A**

**DIP CREDIT AGREEMENT**

**EXHIBIT B**

**BUDGET**

**EXHIBIT B**

**DIP Credit Agreement**

**DRAFT 10/3/2016**

SENIOR SECURED  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of October [●], 2016

Among

GARDEN FRESH RESTAURANT CORP.,  
as the Borrower,

GARDEN FRESH HOLDINGS, INC.,  
as Parent,

THE SUBSIDIARIES OF THE BORROWER IDENTIFIED HEREIN,  
as Guarantors,

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

and

THE LENDERS PARTY HERETO,  
as DIP Lenders

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## SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of October [●], 2016 (this “Agreement”), by and among Garden Fresh Holdings, Inc., a Delaware corporation (the “Parent”), Garden Fresh Restaurant Corp., a Delaware corporation, as borrower and debtor-in-possession in the Chapter 11 Cases (as defined below) (“Garden Fresh” or the “Borrower”), each other subsidiary and affiliate of the Parent listed as a “Guarantor” on the signature pages hereto (each a “Guarantor” and, together with the Parent, the “Guarantors” and, collectively with the Borrower, the “Loan Parties” and each a “Loan Party”), the lenders from time to time party hereto (each a “DIP Lender” and collectively, the “DIP Lenders”), Cortland Capital Market Services LLC, a Delaware limited liability company, as collateral agent for the DIP Lenders (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”) and as administrative agent for the DIP Lenders (in such capacity, together with its successors and assigns in such capacity, the “Administrative Agent” and together with the Collateral Agent, each a “DIP Agent” and collectively, the “DIP Agents”).

### RECITALS

**WHEREAS**, each Loan Party filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on the Petition Date;

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

**WHEREAS**, prior to the Petition Date, the Borrower obtained financing from the Prepetition Term Loan A Lenders, the Prepetition Term Loan B Lenders, the Prepetition Term Loan C Lenders and the Prepetition Term Loan D Lenders;

**WHEREAS**, the Loan Parties have asked the DIP Lenders to extend financial accommodations pursuant to a credit facility (the “DIP Facility”) to the Borrower in the form of term loans in an aggregate principal amount not to exceed \$3,000,000 for the purposes described herein and on the terms and conditions set forth herein;

**WHEREAS**, to provide security for the repayment of the DIP Loans and payment of the other DIP Obligations of the Borrower hereunder, the Loan Parties have agreed to provide the DIP Agents and the DIP Lenders, in each case, subject to the Carve-Out (as defined below), and the lien priority set forth in the Orders (as defined below ) with Liens (as defined below) on the DIP Collateral (as defined below); and

**WHEREAS**, the DIP Lenders are willing to make the requested credit facility available on the terms and conditions set forth herein.

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

## ARTICLE I

### DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

“Account Debtor” means each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable, including any Existing Credit Card Issuer or Existing Credit Card Processor.

“Account Receivable” means, with respect to any Person, any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles (including all Credit Card Receivables and all rights to payment, including those arising in connection with bank and non-bank credit cards) and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

“Acquisition” means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

“Action” has the meaning specified therefor in Section 12.12.

“Additional Amount” has the meaning specified therefor in Section 2.09(a).

“Adequate Protection Claims” means any claims arising pursuant to the Adequate Protection Provisions.

“Adequate Protection Liens” means, collectively, any Liens granted in respect of the Prepetition Term Loan A Obligations and the Prepetition Term Loan B Obligations pursuant to the Adequate Protection Provisions, which Liens shall have the priorities set forth in the Orders.

“Adequate Protection Provisions” means the provisions in paragraphs 11 and 12 of the Interim Order or the Final Order, as applicable, that provide adequate protection for the Prepetition Term Loan A Obligations and the Prepetition Term Loan B Obligations.

“Administrative Agent” has the meaning specified therefor in the preamble hereto.

“Administrative Agent’s Account” means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the DIP Agents and the DIP Lenders under this Agreement and the other DIP Loan Documents.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the general management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any DIP Agent or any DIP Lender and their respective affiliates be considered an “Affiliate” of any Loan Party.

“Agreement” has the meaning specified therefor in the preamble hereto.

“Anti-Terrorism Laws” means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act, as amended by the USA PATRIOT Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States or any other jurisdictions in which the parties to this agreement operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

“Apollo” means Apollo Investment Corporation, a Maryland corporation.

“Approved Budget” means the Initial Budget, as updated pursuant to Section 7.01(a)(xxii) during the continuance of the Chapter 11 Cases, solely to the extent such update is in form and substance satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

“Assignment and Acceptance” means an assignment and acceptance entered into by an assigning DIP Lender and an assignee, and accepted by the Administrative Agent, in accordance with Section 12.07 hereof and substantially in the form of Exhibit E hereto or such other form reasonably acceptable to the Administrative Agent.

“Auction” means an auction conducted in connection with a Section 363 Sale pursuant to the Bidding Procedures to determine the highest and/or best bid for the Loan Parties’ assets.

“Authorized Officer” means, with respect to any Person, the chief executive officer, chief financial officer, treasurer, controller, president, general counsel, secretary, assistant secretary or any vice president of such Person.

“Availability Period” means in respect of the DIP Loans, the period from and including the Closing Date to the earliest of (i) the date that is 12 weeks from the Petition Date and (ii) the date of termination of the DIP Loan Commitments pursuant to the terms hereof.

“Bankruptcy Code” means title 11 of the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended and in effect from time to time, and any successor statute.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Cases.

“Bidding Procedures” means bidding procedures to be used at an Auction in connection with a Section 363 Sale (in form and substance reasonably satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders), which shall be filed with, and approved by an order of, the Bankruptcy Court.

“Blocked Person” has the meaning assigned to such term in Section 6.01(hh).

“Board” means the Board of Governors of the Federal Reserve System of the United States.

“Board of Directors” means, (a) with respect to any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors or equivalent governing body of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee or board of managers of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the entity, individual, board or committee of such Person serving a similar function.

“Borrower” has the meaning specified therefor in the preamble hereto.

“Borrowing” means a making of a DIP Loan to the Borrower by each of the DIP Lenders pursuant to Section 2.01.

“BP” means BP Salad Holdings, LLC.

“BP Parties” means BP and each of its Affiliates and Related Funds.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close in the State of New York.

“Capital Expenditures” means, with respect to any Person for any period, the sum of, without duplication, (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in “property, plant and equipment” or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed and including all Capitalized Lease Obligations paid or payable during such period, plus (b) to the extent not covered by clause (a) above, the aggregate

of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Equity Interests of, any other Person.

“Capitalized Lease” means, with respect to any Person, any lease of real or personal property by such Person as lessee which is (a) required under GAAP to be capitalized on the balance sheet of such Person or (b) a transaction of a type commonly known as a “synthetic lease” (i.e., a lease transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes); provided that no Non-Financing Lease shall be deemed a Capitalized Lease regardless of the GAAP treatment of such Non-Financing Lease.

“Capitalized Lease Obligations” means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Carve-Out” has the meaning set forth in the Interim Order (with respect to the period prior to the entry of the Final Order) or the Final Order (from and after the date the Final Order is entered).

“Cash Collateral” has the meaning specified therefor in the Orders.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within one year from the date of acquisition thereof; (b) commercial paper, maturing not more than one year after the date of issue rated P1 by Moody’s or A1 by Standard & Poor’s; (c) certificates of deposit maturing not more than one year after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000; and (f) marketable tax exempt securities rated A or higher by Moody’s or A+ or higher by Standard & Poor’s, in each case, maturing within one year from the date of acquisition thereof.

“Cash Management Order” means, as the context requires, that certain (i) Interim Order (I) Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving The Requirements of 11 U.S.C. § 345(B) On An Interim Basis, (IV) Authorizing The Continuation Of Intercompany Transactions And Granting Administrative Expense Status To Certain Postpetition Intercompany Claims, and (V) Maintaining The Ability To Use Debit, Wire and Ach Payments or (ii) Final Order (I) Approving Continued Use of Cash Management System, (II) Authorizing Use of

Prepetition Bank Accounts and Business Forms, (III) Waiving The Requirements of 11 U.S.C. § 345(B) On An Interim Basis, (IV) Authorizing The Continuation Of Intercompany Transactions And Granting Administrative Expense Status To Certain Postpetition Intercompany Claims, and (V) Maintaining The Ability To Use Debit, Wire and Ach Payments, in each case, entered by the Bankruptcy Court, which shall be in form and substance reasonably satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

“Cerberus” means Cerberus Business Finance, LLC, a Delaware limited liability company.

“CFC” means a controlled foreign corporation (as that term is defined in Section 957 of the Internal Revenue Code).

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case, pursuant to Basel III, shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means each occurrence of any of the following:

(a) the Permitted Holders shall cease to have beneficial ownership (as defined in Rule 13(d)(3) under the Exchange Act) and control, in the aggregate, directly or indirectly, of more than 50% on a fully diluted basis of the aggregate outstanding voting power and economic interests of the Equity Interests of the Parent (or its direct or indirect ultimate parent holding company);

(b) any Loan Party ceases to own and control 100% of the voting and economic interests of the Equity Interests of such Loan Party’s Subsidiaries, unless otherwise permitted hereunder;

(c) at any time the Permitted Holders cease to have the power, directly or indirectly, to appoint, or cease to have appointed or caused the appointment of, within 10 Business Days of the applicable vacancy, a majority of the individuals who compose the Board of Directors of the Parent;

(d) the Parent consolidates or amalgamates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to another Person (other than in connection with any transaction permitted pursuant to the DIP Loan Documents), or (ii) any entity consolidates or amalgamates with or merges into the Parent, which in either

event (i) or (ii) is pursuant to a transaction in which the outstanding voting Equity Interests of the Parent is reclassified or changed into or exchanged for cash, securities or other property, other than any such transaction in which the Permitted Holders have beneficial ownership, directly or indirectly, in the aggregate of more than 50% of the aggregate voting power and economic interests of all Equity Interests (on a fully diluted basis) of the resulting, surviving or transferee entity; or

(e) any “change of control” or similar event under the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents.

“Chapter 11 Cases” means the voluntary cases under chapter 11 of the Bankruptcy Code of the Borrower and its affiliated debtors and debtors-in-possession in the Bankruptcy Court.

“Closing Date” has the meaning specified therefor in Section 5.01.

“Collateral Agent” has the meaning specified therefor in the preamble hereto.

“Collateral Agent Advances” has the meaning specified therefor in Section 10.08(a).

“Collateral Documents” means the Security Agreement, any Copyright Security Agreement, the Orders, any Patent Security Agreement, any Trademark Security Agreement, any Mortgage, and such other mortgages, debentures, charges, pledges, security agreements, joinder agreements, documents and instruments as may in each case be reasonably required by the Required DIP Lenders and/or are entered into in connection with this Agreement.

“Committee” means the official committee of unsecured creditors that may be appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

“Compliance Certificate” has the meaning specified therefor in Section 7.01(a)(iv).

“Consortium Agreements” means, collectively, the Consortium Services Agreement; the limited liability company agreement of Associated Concepts Group, LLC; and the Members’ Agreement, dated June 18, 2012, among Associated Concepts Group, LLC and each Member (as defined therein).

“Consortium Services Agreement” means that certain Consortium Services Agreement, dated as of October 15, 2012, by and among certain of the Borrower and Guarantors and Associated Concepts Group, LLC, a Delaware limited liability company.

“Contingent Obligation” means, with respect to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether

directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Contingent Obligation” shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

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

“Copyright Security Agreement” has the meaning specified therefor in the Security Agreement.

“Credit Card Receivables” means, with respect to each Loan Party, collectively, (a) all present and future rights of such Loan Party to payment from any Existing Credit Card Issuer, Existing Credit Card Processor or other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (b) all present and future rights of such Loan Party to payment from any Existing Credit Card Issuer, Existing Credit Card Processor or other third party in connection with the sale or transfer of Accounts (as defined in the Uniform Commercial Code) arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Existing Credit Card Issuer or Existing Credit Card Processor under the Existing Credit Card Agreements or otherwise.

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

“Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“DIP Agent” and “DIP Agents” have the respective meanings specified therefor in the preamble hereto.

“DIP Collateral” means all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person in favor of the Collateral Agent, for the benefit of the DIP Lenders, as security for all or any part of the DIP Obligations (including, for the avoidance of doubt, all collateral securing the Prepetition Term Loan A Obligations and Prepetition Term Loan B Obligations) whether pursuant to the DIP Loan Documents or otherwise.

“DIP Facility” has the meaning specified therefor in the recitals hereto.

“DIP Lender” and “DIP Lenders” has the meaning specified therefor in the preamble hereto and shall include any financial institution or other Person that from time to time becomes a party hereto as a DIP Lender in compliance with the requirements of Section 12.07 (if any), in each case together with its successors.

“DIP Liens” means the Liens and security interests granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Collateral Documents and the Orders, which such Liens and security interests shall have the priorities set forth in the Orders.

“DIP Loans” means, collectively, the Initial DIP Loans and the Delayed Draw DIP Loans, including, in each case, the PIK Loans, made by the DIP Lenders pursuant to this Agreement.

“DIP Loan Advance” has the meaning specified therefor in Section 2.01.

“DIP Loan Commitment” means, with respect to each DIP Lender, the commitment of such DIP Lender to make a portion of the DIP Loans to the Borrower in the amount set forth in Schedule 1.01(A) hereto or such higher amount as may be provided under Section 2.01.

“DIP Loan Documents” means this Agreement, the Fee Letter, any Guaranty, the Intercompany Subordination Agreement, the Orders, the Funds Flow Direction, the Security Agreement, any other Collateral Document, any note or notes executed by Borrower in favor of any DIP Lender and any other agreement, instrument, certificate, report and other document executed and delivered (now or in the future) pursuant hereto or thereto, in connection herewith or therewith) or otherwise evidencing or securing the DIP Loan or any other DIP Obligation.

“DIP Obligations” means all present and future indebtedness, obligations (including indemnification obligations) liabilities, fees, premiums, guarantees, covenants and duties of any kind and description, of each Loan Party owed to the DIP Agents and the DIP Lenders arising under or in connection with this Agreement, the Orders or any other DIP Loan Document, whether direct or indirect, whether or not the right of payment in respect of such

claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by the Chapter 11 Cases. Without limiting the generality of the foregoing, the DIP Obligations of each Loan Party under the DIP Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the DIP Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any DIP Agent or any DIP Lender (in its sole discretion) may elect to pay or advance on behalf of such Person.

“Disbursements Line” has the meaning specified therefor in Section 7.02(t).

“Disposition” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells (including, without limitation, any sale and leaseback transaction), assigns, transfers, conveys, licenses, leases or otherwise disposes of any property or assets (whether now owned or hereafter acquired, but exclusive of the issuance of Equity Interests by such Person) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. “Disposition” shall not include the expiration of a Lease by its terms or non-renewal of a Lease.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than as a result of a contingent event (provided that the DIP Obligations are first repaid in full)), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than as a result of a contingent event (provided that the DIP Obligations are first repaid in full)), in whole or in part, on or prior to the date which is one year after the Final Maturity Date, (b) is convertible into or exchangeable for (i) debt securities or (ii) any Equity Interests referred to in clause (a) above, in each case at any time prior to the date which is one year after the Final Maturity Date, (c) contains any repurchase obligation that may come into effect either (i) prior to payment in full of all DIP Obligations or (ii) prior to the date that is one year after the Final Maturity Date (other than as a result of a contingent event (provided that the DIP Obligations are first repaid in full)) or (d) provides for scheduled payments or the payment of cash dividends or distributions prior to the date that is one year after the Final Maturity Date.

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

“Employee Plan” means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained (or that was maintained at any time during the six (6) calendar years preceding the date of any borrowing hereunder) for employees of any Loan Party or to which any Loan Party has any liability (including any contingent liability with respect to any of its ERISA Affiliates).

“Environmental Actions” means any action, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment,

letter, consent decree, settlement or other written communication from any Person or Governmental Authority relating to (a) violation of, non-compliance with or alleged violation of or non-compliance with, any Environmental Law by any Loan Party or any of its Subsidiaries or any of their predecessors in interest in connection with the ownership or operation of the assets, the facilities, the properties or the business of any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest; (b) any actual or alleged liabilities, responsibilities or obligations of any Loan Party or any of its Subsidiaries arising under Environmental Law (i) relating to adverse environmental conditions at, on, under or migrating from any assets, facilities or properties owned or operated by any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest; or (ii) resulting from or in connection with the operation of the assets, the facilities, the properties or the business of any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest; or (c) any Release or threatened Release of Hazardous Materials (i) in, at, on, under, emanating or migrating from or to any assets, properties or businesses owned or operated by any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest, (ii) in, at, on, under, emanating or migrating from any adjoining properties or businesses, or (iii) in, at, on, under, emanating or migrating from any facilities which received Hazardous Materials generated, transported, treated, stored, used or disposed of by any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other present or future federal, state, local or foreign statute, ordinance, rule, regulation, order, judgment, decree, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or human health and safety (as it relates to exposure to Hazardous Materials) or relating to the protection of the environment or human health and safety (as it relates to exposure to Hazardous Materials) or the Release, deposit or migration of any Hazardous Materials into the environment.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, Remedial Actions, losses, damages, natural resource damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Environmental Action or in connection with any adverse environmental condition at, on, under or migrating from any assets, facilities or properties owned or operated by any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest or any Release of Hazardous Materials resulting from the ownership, lease, sublease or other occupation of property or the operation of any Loan Party or any of its Subsidiaries or any of their respective predecessors in interest.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

“Environmental Permits” means all permits, licenses, authorizations, certificates, approvals, registrations or other written documents required by any Governmental Authority under any Environmental Laws.

“Equipment” means equipment (as that term is defined in the Uniform Commercial Code), and includes machinery, machine tools, motors, furniture, furnishings, vehicles (including motor vehicles), computer hardware, tools, parts, and goods (other than consumer goods, farm products, Inventory or fixtures), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

“Equity Interest” means (a) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, and (b) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

“Equity Issuance” means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by Parent of any cash capital contributions.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a “controlled group” within the meaning of Sections 414(b), (c), (m) and (o) of the Internal Revenue Code.

“Event of Default” has the meaning specified therefor in Section 9.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Taxes” has the meaning specified therefor in Section 2.09(a).

“Executive Order No. 13224” means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Existing Blocked Accounts” means “Blocked Accounts” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Existing Control Agreement” means any “Control Agreement” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Existing Credit Card Acknowledgments” means “Credit Card Acknowledgments” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Existing Credit Card Agreements” means “Credit Card Agreements” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Existing Credit Card Issuers” means “Credit Card Issuers” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Existing Credit Card Processor” means any “Credit Card Processor” as defined under the Prepetition Term Loan A Financing Agreement and the Prepetition Term Loan B Financing Agreement.

“Extraordinary Receipts” means any cash received by any Loan Party not in the ordinary course of business (and not consisting of proceeds of Dispositions or Indebtedness), including, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (excluding, so long as no Event of Default has occurred and is continuing, business interruption), (d) proceeds of judgments, proceeds of settlements or other consideration of any kind received in connection with any cause of action, (e) proceeds of condemnation awards (and payments in lieu thereof), and (f) indemnity payments.

“Facility” means any real property, including, without limitation, the land on which such facility is located, all buildings and other improvements thereon, all fixtures located at or used in connection with such facility, all whether now or hereafter existing, owned, leased, operated or used by any Loan Party.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version to the extent such version is substantively comparable and not materially more onerous to comply with) and any regulations promulgated thereunder or official interpretations thereof, and any applicable intergovernmental agreement with respect thereto.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so

published for any day which is a Business Day, the rate as determined by the Administrative Agent in a commercially reasonable manner.

“Fee Letter” means the fee letter, dated as of the date hereof, among the Borrower and the DIP Agents and any fee letter designated therein as a Fee Letter for the purposes of this Agreement.

“Final Maturity Date” means the earliest of: (i) the Stated Maturity Date, (ii) the date of consummation of any Section 363 Sale, (iii) if the Final Order has not been entered, the date that is thirty (30) calendar days after the Petition Date, (iv) the Plan Effective Date; and (v) the date of the acceleration of the DIP Obligations in accordance with the terms set forth herein.

“Final Order” means a final order of the Bankruptcy Court approving the DIP Facility, the DIP Loans and the DIP Loan Documents in form and substance satisfactory to the DIP Agents, the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, which Final Order shall be in full force and effect and shall not have been reversed, vacated, stayed or subject to the possibility of appeal, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Agents (at the direction of the Required DIP Lenders) and the Prepetition Term Loan A Required Lenders.

“Financial Statements” means (a) the audited consolidated balance sheet of the Parent and its Subsidiaries for the Fiscal Year ended on September 30, 2015, and the related consolidated statement of operations and cash flows for the Fiscal Year then ended, and (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the 11 months ended August 31, 2016, and the related consolidated statement of operations and cash flows for the eleven months then ended.

“Fiscal Year” means the twelve-month annual accounting period of Garden Fresh ending on September 30 of each year.

“Funds Flow Direction” means that certain Funds Flow Direction Letter, dated as of the Closing Date from the Loan Parties to the Administrative Agent and the DIP Lenders.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided, however, that for the purpose of Section 7.02 and Section 7.03 hereof and the definitions used therein, “GAAP” shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided, further, however, that if there occurs after the date of this Agreement any change in GAAP that affects in any respect any of the covenants contained in Section 7.02 or the calculation of any covenant contained in Section 7.03 hereof, and in each case, the definitions used therein, the Required DIP Lenders and the Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to such negative covenants or the calculation of such financial covenants with the intent of having the respective positions of the DIP Lenders and the Borrower after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.02 and Section 7.03 hereof shall be calculated as if no such change in GAAP had occurred. Notwithstanding

anything to the contrary contained herein, to the extent a calculation or financial statement item contained herein must be in compliance with GAAP, it is understood and agreed by all parties that Non-Financing Leases shall be treated as operating leases regardless of the GAAP treatment and this aberration from GAAP is permitted and consented to by the Administrative Agent and DIP Lenders.

“Garden Fresh” has the meaning specified therefor in the preamble hereto.

“Governing Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture agreement, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

“Governmental Authority” means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranteed DIP Obligations” has the meaning specified therefor in Section 11.01.

“Guarantor” means (a) the Parent and each Subsidiary of the Parent listed as a “Guarantor” on the signature pages hereto, and (b) each other Person which guarantees all or any part of the DIP Obligations.

“Guaranty” means (a) the guaranty of each Guarantor party hereto contained in ARTICLE XI hereof and (b) each other guaranty, in form and substance reasonably satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders guaranteeing all or part of the DIP Obligations.

“Hazardous Material” means (a) any element, compound, chemical, substance, material, or waste that is defined in or regulated under Environmental Law, including those listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws; (b) oil, petroleum, petroleum derived substances, petroleum refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including,

without limitation, asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws.

“Hedging Agreement” means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement, in each case, entered into in the ordinary course of business and not for speculation purposes.

“Highest Lawful Rate” means, with respect to any DIP Agent or any DIP Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the DIP Obligations under laws applicable to such DIP Agent or such DIP Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Holdings” means GF Holdings, Inc., a Delaware corporation.

“Holdout Lender” has the meaning specified therefor in Section 12.02(b).

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables and accrued expenses or other accounts payable incurred in the ordinary course of such Person’s business and not more than 60 days past due, unless the payment of such account payables is being contested in good faith by appropriate proceedings promptly initiated and diligently being conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor), including, without limitation, the fair value of earn-outs and seller notes; (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations of such Person (it being understood for the avoidance of doubt that no operating lease shall constitute Indebtedness solely by virtue of a change in GAAP occurring after the Closing Date); (f) all unpaid reimbursement obligations and liabilities, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) all obligations and liabilities, calculated on a basis reasonably satisfactory to the Required DIP Lenders and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations in respect of the foregoing; and (j) all obligations referred to in clauses (a) through (i) of this definition of another Person secured by (or for which the holder of

such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer, to the extent such Indebtedness has recourse to such Person. Any amount of any Indebtedness for which recourse is expressly limited to a specific asset shall be limited to the fair market value of such asset. For the avoidance of doubt, “Indebtedness” shall not include obligations of the Loan Parties under Non-Financing Leases.

“Indemnified Matters” has the meaning specified therefor in Section 12.15.

“Indemnitees” has the meaning specified therefor in Section 12.15.

“Initial Budget” means a cash flow forecast setting forth all cumulative and line-item cash receipts and expenditures on a weekly basis for the period beginning as of the week of the Closing Date through and including the 13th week after the Closing Date, broken down by week, including the anticipated weekly uses of the proceeds of the DIP Facility for such period, which shall include, among other things, available cash, cash flow, payment of trade payables and ordinary course expenses, total cash expenditures and Capital Expenditures, fees and expenses relating to the DIP Facility, and working capital and other general corporate needs, which forecast shall be in form and substance reasonably satisfactory to the Administrative Agent (at the direction of the Required DIP Lenders) and the Prepetition Term Loan A Required Lenders.

“Initial DIP Loans” has the meaning specified therefor in Section 2.01(a).

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intercompany Subordination Agreement” means an Intercompany Subordination Agreement made by the Loan Parties in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders, in form and substance reasonably satisfactory to the Required DIP Lenders.

“Interim Hearing” has the meaning specified therefor in the Interim Order.

“Interim Order” means the interim order entered by the Bankruptcy Court in the Chapter 11 Cases approving the DIP Facility, the DIP Loans and the DIP Loan Documents on an interim basis, in form and substance satisfactory to the Administrative Agent, the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

“Inventory” means, with respect to any Person, all goods and merchandise of such Person, including, without limitation, all raw materials, work-in-process, packaging, supplies, materials and finished goods of every nature used or usable in connection with the shipping,

storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account Receivable or cash, but excluding Equipment.

“Investment” means, with respect to any Person, (x) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts Receivable arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (y) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (z) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP, with the value of each Investment measured at the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any return or distributions received by Parent and its Subsidiaries with respect thereto.

“Junior Obligations” means, collectively, principal and interest in respect of the Prepetition Term Loan C Obligations, Prepetition Term Loan D Obligations, and any accrued management fees payable to the Permitted Holders; each of the foregoing is, individually, a “Junior Obligation”.

“Lease” means any lease of real property to which any Loan Party or any of its Subsidiaries is a party as lessor or lessee.

“Lien” means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security. For the avoidance of doubt, “Lien” shall not be deemed to include licenses of intellectual property.

“Loan Account” means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrower, in which the Borrower will be charged the DIP Loan and all other DIP Obligations incurred by, the Borrower.

“Loan Party” has the meaning specified therefor in the preamble hereto.

“Management Agreement” means that certain Management Services Agreement, dated as of October 18, 2005, between Garden Fresh and the Sun Manager, as amended by that certain Amendment No. 1 to Management Services Agreement, dated as of October 10, 2012, and that certain Amendment No. 2 to Management Services Agreement, dated as of October 3, 2013, and as amended in accordance with Section 7.02(m) and as in effect on the Petition Date.

“Material Adverse Effect” means a material adverse effect on any of (a) the operations, business, assets, properties or financial condition of the Loan Parties taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform any of their obligations under the DIP Loan Documents, (c) the legality, validity or enforceability of this Agreement, the Orders or any other material DIP Loan Document or any of the Prepetition Term Loan A Loan Documents, (d) the rights and remedies of any DIP Agent or any DIP Lender under the Orders, any DIP Loan Document, or of the Prepetition Term Loan A Agent or any Prepetition Term Loan A Lender under the Orders or any Prepetition Term Loan A Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders (except as otherwise contemplated in this Agreement, the Security Agreement or the Orders) and the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders (except as otherwise contemplated in the Prepetition Term Loan A Loan Documents or the Orders), in each case, on any of the DIP Collateral; provided, that, under clauses (a) through (e), other than the commencement of the Chapter 11 Cases, the continuation of the Chapter 11 Cases and the consequences that would normally result therefrom.

“Material Contract” means, with respect to any Person, (a) the Management Agreement, (b) the Prepetition Term Loan A Loan Documents, (c) the Prepetition Term Loan B Loan Documents, (d) the Prepetition Term Loan C Loan Documents, (e) the Prepetition Term Loan D Loan Documents, (f) the Sponsor Subordinated Debt Documents, and (g) each other contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$1,000,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days’ notice without penalty or premium) and (h) all other contracts or agreements the loss of which could reasonably be expected to result in a Material Adverse Effect on such Person (viewed on a consolidated basis with its parent and subsidiary companies).

“Maximum Judgment Amount” has the meaning specified therefor in Section 9.01(k).

“Maximum Term Loan A Principal Amount” has the meaning set forth in the Prepetition Term Loan A/B Intercreditor Agreement for the term “Maximum First Lien Principal Amount”.

“Minimum Liquidity” means the sum of (i) all cash amounts on deposit in Existing Blocked Accounts of the Loan Parties and (ii) all pending deposits that are to be credited to such Existing Blocked Accounts minus the sum of (x) the aggregate amount of outstanding un-cashed checks (other than checks with respect to payroll payments) that are to be drawn on such Existing Blocked Accounts and (y) un-cashed checks with respect to payroll payments that are to be drawn on such Existing Blocked Accounts which have been outstanding for more than one (1) week.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means a mortgage, deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Required DIP Lenders, made by a Loan Party in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders, securing the DIP Obligations and delivered to the Collateral Agent pursuant to the provisions hereof.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Loan Party has contributed to, or has been obligated to contribute, at any time during the preceding six (6) years or to which any Loan Party has any liability (including any contingent liability with respect to any of its ERISA Affiliates).

“Net Cash Proceeds” means, (a) with respect to any Disposition or any Extraordinary Receipts resulting from casualty insurance or condemnation events by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (i) reasonable and documented expenses and transaction costs (including, without limitation, sales commissions and legal, accounting and investment banking fees) related thereto incurred by such Person or such Subsidiary in connection therewith, (ii) any amount required to be provided by such Person, as a reserve, in accordance with GAAP against any liabilities associated with such Disposition or Extraordinary Receipts resulting from casualty insurance or condemnation events, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with any such Disposition or Extraordinary Receipts resulting from casualty insurance or condemnation events (provided however, that the amount of any such reserve, at the time that such reserve is no longer required in accordance with GAAP and to the extent that such amount is not actually applied to the liability for which it was reserved, shall be deemed to be part of the Net Cash Proceeds of such disposition and remitted to the Administrative Agent for application to the DIP Loan in accordance with Section 2.05(c)), and (iii) sales taxes paid by such Person (after taking into account any available tax credits or deductions and any tax sharing arrangements and any tax distributions reasonably expected to be made thereto), (b) with respect to the issuance or incurrence of any Indebtedness by any Person or any of its Subsidiaries, or an Equity Issuance, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary in connection therewith, after deducting therefrom only reasonable and documented expenses and transaction costs (including, without limitation, sales commissions and legal, accounting and investment banking fees) incurred by such Person or such Subsidiary in connection therewith and (c) with respect to Extraordinary Receipts other than those resulting from casualty insurance or condemnation events, the aggregate cash proceeds received by such Person in connection therewith, net of (i) the direct costs incurred in collecting such amount and (ii) taxes paid (after taking into account any available tax credits or deductions and any tax sharing arrangements and any tax distributions reasonably expected to be made thereto); in each case of clause (a), (b) and (c) to the extent, but only to the extent, that the amounts so deducted are (x) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries (other than a portfolio company controlled by Sun or any of its

Affiliates) and (y) properly attributable to such transaction or to the asset that is the subject thereof.

“New Lending Office” has the meaning specified therefor in Section 2.09(a).

“Non-Financing Leases” means any lease for real or personal property that are treated as capital or operating leases under GAAP so long as such leases are not, as a matter of economic substance, a secured financing transaction or other means of financing the acquisition or maintenance of such real or personal property.

“Non-U.S. Lender” has the meaning specified therefor in Section 2.09(d).

“Notice of Borrowing” has the meaning specified therefor in Section 2.02(a).

“OFAC Sanctions Programs” means the laws, regulations and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as it has been or shall thereafter be renewed, extended, amended, or replaced, and the list of Specially Designated Nationals and Blocked Persons administered by OFAC, as such list may be amended from time to time.

“Operating Account” has the meaning specified therefor in Section 8.01(a).

“Operating Disbursement Variance” has the meaning specified therefor in Section 7.02(t).

“Operating Lease Obligations” means all obligations for the payment of rent for any real or personal property under leases or agreements to lease, other than Capitalized Lease Obligations.

“Orders” means, collectively, the Interim Order and the Final Order, and separately, the Interim Order or the Final Order, as context requires.

“Other Taxes” has the meaning specified therefor in Section 2.09(b).

“paid in full” has the meaning specified in Section 1.02.

“Parent” has the meaning specified therefor in the preamble hereto.

“Participant Register” has the meaning specified therefor in Section 12.07(g).

“Patent Security Agreement” has the meaning specified therefor in the Security Agreement.

“Payment Office” means the Administrative Agent’s office located at 225 West Washington Street, Suite 2100, Chicago, IL 60606 (Telephone: (312) 564-5100), or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Borrower.

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

“Permitted Dispositions” means (a) sales or other dispositions of Inventory to buyers in the ordinary course of business consistent with past practice, (b) sales or other dispositions of surplus, obsolete or worn-out Equipment in the ordinary course of business so long as the aggregate fair market value of all such sales and dispositions does not exceed \$200,000, exclusive of anticipated store closures approved by the Required DIP Lenders, during the period from the Closing Date to the Final Maturity Date, (c) the use or transfer of Cash and Cash Equivalents by Parent and its Subsidiaries in a manner that is not prohibited by the terms of this Agreement or the other DIP Loan Documents, (d) the licensing by any Loan Party of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business consistent with past practice, (e) the transfer, assignment, cancellation, abandonment or other disposition of patents, trademarks, copyrights or other intellectual property rights which are, in the reasonable judgment of a Loan Party, no longer used or useful or material in the business of any Loan Party, (f) the granting of licenses, leases or subleases to other Persons in the ordinary course of business consistent with past practice and not materially interfering with the conduct of business of any of the Loan Parties, (g) sales or other dispositions of assets from any Loan Party (other than Parent) to any other Loan Party (other than Parent), (h) the expiration of any contract, contract right or other agreement in accordance with its term, (i) any involuntary condemnation, seizure or taking, by eminent domain or otherwise, or confiscation or requisition of use of property, (j) any insured casualty or destruction of any owned or leased real property (including any Facilities subject to a Mortgage), (k) to the extent approved by the Required DIP Lenders, the termination or sublease of Leases for corporate locations (including central kitchen and distribution locations), (l) to the extent approved in writing by the Required DIP Lenders, the termination or sublease of third-party subleases, (m) to the extent approved by the Prepetition Term Loan A Required Lenders and the Required DIP Lenders, the termination or sublease of Equipment leases, (n) to the extent approved by the Required DIP Lenders in writing, the termination or sublease of Restaurant Leases for underperforming Restaurants; (o) the disposition, pursuant to capital lease agreements or similar arrangements, of Equipment and leasehold improvements located at corporate locations (including central kitchen and distribution locations) or Restaurants to the extent approved by the Prepetition Term Loan A Required Lenders and the Required DIP Lenders in their sole discretion or (p) liquidation sales related to the closure of the underperforming Restaurants set forth on Schedule 1.01(B); provided, however, that Net Cash Proceeds from such liquidation sales in an amount not to exceed \$500,000 may be used by the Borrower for operating expenses (and any Net Cash Proceeds from such liquidation sales in excess thereof shall be used to prepay the Prepetition Term Loan A Obligations in accordance with the Prepetition Term Loan A Loan Documents).

“Permitted Holder” means Sun and its Affiliates.

“Permitted Indebtedness” means:

(a) any Indebtedness owing to any DIP Agent or any DIP Lender under this Agreement and the other DIP Loan Documents;

(b) Indebtedness (other than Indebtedness described in clauses (c) and (d) below) listed on Schedule 7.02(b) to the Prepetition Term Loan B Financing Agreement to the extent (x) existing on the Petition Date immediately prior to the Chapter 11 Cases, and (y) permitted under the Prepetition Term Loan B Debt Documents;

(c) Indebtedness evidenced by Capitalized Lease Obligations entered into in order to finance Capital Expenditures made by the Loan Parties in accordance with the provisions of Section 7.02(g), which Indebtedness, when aggregated with the principal amount of all Indebtedness incurred under this clause (c) and clause (d) of this definition, does not exceed \$100,000 at any time outstanding;

(d) Indebtedness permitted by clause (e) of the definition of “Permitted Lien”;

(e) Intercompany Indebtedness owed from Loan Party to another Loan Party;

(f) obligations in respect of performance, statutory, customs, stay, utility, bid and appeal bonds and other obligations of a like nature arising in the ordinary course of business and, to the extent not exceeding \$750,000 at any time outstanding, performance and surety bonds and similar completion guaranties;

(g) Indebtedness owed to insurance companies to finance insurance premiums in the ordinary course of business, solely to the extent, and in the aggregate amount not to exceed the amount, outstanding on the Petition Date;

(h) [Reserved];

(i) the Prepetition Term Loan A Obligations, the Prepetition Term Loan B Obligations, the Prepetition Term Loan C Obligations and the Prepetition Term Loan D Obligations, solely to the extent that such Prepetition Term Loan A Obligations, Prepetition Term Loan B Obligations, Prepetition Term Loan C Obligations and Prepetition Term Loan D Obligations, and the Liens that secure such Prepetition Term Loan A Obligations, Prepetition Term Loan B Obligations, Prepetition Term Loan C Obligations and Prepetition Term Loan D Obligations (as applicable), are subject to the terms of all intercreditor agreements relating thereto existing on the Petition Date (as modified by, and subject to, the Orders); provided, that the principal amount of the Prepetition Term Loan A shall not at any time exceed the Maximum Term Loan A Principal Amount;

(j) [Reserved];

(k) [Reserved];

(l) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called “procurement cards” or “P-cards”) or other similar cash management services, in each case, incurred in the ordinary course of business consistent with past practice and not to exceed \$1,100,000 in the aggregate at any time outstanding (it being agreed, for the avoidance of doubt, that any such obligation shall not be counted toward such cap unless and until such obligation constitutes Indebtedness

pursuant to the applicable clause of the definition of “Indebtedness” contained in this Section 1.01);

(m) Indebtedness consisting of Non-Financing Leases;

(n) Indebtedness in respect of guarantees by a Loan Party in respect of Indebtedness of any other Loan Party permitted hereunder;

(o) [Reserved];

(p) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts, to the extent such arrangement is customary and is entered into in the ordinary course of business consistent with past practice;

(q) [Reserved];

(r) [Reserved];

(s) [Reserved];

(t) Indebtedness in connection with the issuance of gift cards to customers in the ordinary course of business consistent with past practice;

(u) Indebtedness due to any landlord in connection with the financing by such landlord of leasehold improvements, so long as the aggregate outstanding amount of such Indebtedness does not exceed \$200,000 in any Fiscal Year or \$500,000 in the aggregate at any time;

(v) [Reserved]; and

(w) [Reserved].

“Permitted Intercompany Loans” means loans made by a Loan Party to another Loan Party, provided that, in the case of loans made to or by the Parent and/or Holdings, such loan shall only be permitted to the extent a distribution is otherwise permitted to be made under Section 7.02(h).

“Permitted Investments” means:

(x) Investments in cash and Cash Equivalents;

(y) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business consistent with past practice;

(z) advances made in connection with purchases of goods or services in the ordinary course of business consistent with past practice;

(aa) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business consistent with past practice or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(bb) Investments existing on the date hereof, as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof (except for any increase in the value thereof)<sup>1</sup>;

(cc) Permitted Intercompany Loans;

(dd) Loans and advances by the Borrower to employees for moving, entertainment, travel and other similar expenses in the ordinary course of business not to exceed \$100,000 in the aggregate at any time outstanding;

(ee) equity investments by Parent or any of its Subsidiaries in other Subsidiaries of Parent that are Loan Parties;

(ff) [Reserved];

(gg) [Reserved];

(hh) Investments consisting of endorsements for the collection or deposits in the ordinary course of business consistent with past practice;

(ii) Investments received in connection with good faith settlement of delinquent accounts receivable and disputes with any customers, franchisees or suppliers in the ordinary course of business consistent with past practice in an aggregate outstanding amount at any one time not in excess of \$50,000;

(jj) [Reserved];

(kk) Investments in deposit accounts, commodities accounts, securities accounts and other similar accounts opened in the ordinary course of business consistent with past practice so long as such accounts are subject to a control agreement in favor of the Collateral Agent, for the benefit of the Secured Parties;

(ll) [Reserved];

(mm) security deposits provided to landlords, utility companies and governmental authorities in the ordinary course of business consistent with past practice;

(nn) [Reserved]; and

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<sup>1</sup> Subject to review of Schedule 7.02(e).

(oo) Investments consisting of capital lease agreements or similar arrangements for Equipment and leasehold improvements located at corporate locations (including central kitchen and distribution locations) or Restaurants in the amounts not to exceed those set forth in the Approved Budget.

“Permitted Liens” means:

(pp) the DIP Liens and the Adequate Protection Liens;

(qq) Liens for taxes, assessments, levies and governmental charges the payment of which is not required under Section 7.01(c) (ignoring for purposes of this definition the phrase “other than a Permitted Lien”);

(rr) Liens imposed by law, such as carriers’, warehousemen’s, mechanics’, landlord’s, materialmen’s and other similar Liens arising in the ordinary course of business consistent with past practice and securing obligations (other than Indebtedness for borrowed money) that (i) are not overdue by more than 60 days, (ii) are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor and (iii) are not in excess of \$25,000 individually or \$250,000 in the aggregate and solely to the extent the rights and remedies of the holder of such Lien are stayed or enjoined by the Bankruptcy Court pursuant to the Chapter 11 Cases;

(ss) (i) purchase money Liens on Equipment acquired or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business consistent with past practice to secure the purchase price of such Equipment or Indebtedness incurred solely for the purpose of financing the acquisition of such Equipment or (ii) Liens existing on such Equipment at the time of its acquisition; provided, however, that (A) no such Lien shall extend to or cover any other property of any Loan Party or any of its Subsidiaries, (B) the principal amount of the Indebtedness secured by any such Lien shall not exceed the lesser of 80% of the fair market value or the cost of the property so held or acquired and (C) the aggregate principal amount of Indebtedness secured by any or all such Liens shall not exceed at any one time outstanding \$1,000,000;

(tt) deposits and pledges of cash securing (i) obligations incurred in respect of workers’ compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations permitted by clause (f) of the definition of Permitted Indebtedness, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business consistent with past practice and secure obligations not past due or are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(uu) easements, covenants, conditions, restrictions, rights-of-way, encroachments, environmental institutional control and land use limitations utilized in connection with environmental remedial matters, municipal and zoning restrictions and similar

charges or encumbrances on real property and minor irregularities in the title thereto that (i) do not (A) secure obligations for the payment of money or (B) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business or (ii) are disclosed in the applicable title insurance policy provided to and accepted by the Collateral Agent;

(vv) the Prepetition Permitted Priority Liens;

(ww) Liens on real property or Equipment securing Indebtedness permitted by subsection (c) of the definition of Permitted Indebtedness;

(xx) any interest or title of a licensor, sublicensor, lessor or sublessor in and to personal property (other than Accounts Receivable or Inventory) licensed, sublicensed, leased or subleased (other than through a Capital Lease) by a Loan Party, in each case extending only to such personal property and incurred in the ordinary course of business consistent with past practice;

(yy) the Prepetition Term Loan A Liens, the Prepetition Term Loan B Liens, the Prepetition Term Loan C Liens and the Prepetition Term Loan D Liens;

(zz) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(k) and solely to the extent the rights and remedies of the holder of such Liens are stayed or enjoined by the Bankruptcy Court pursuant to the Chapter 11 Cases;

(aaa) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business consistent with past practice and Liens in favor of collecting banks arising under Section 4-210 of the Uniform Commercial Code;

(bbb) [Reserved];

(ccc) precautionary UCC financing statement filings regarding operating leases;

(ddd) [Reserved];

(eee) unperfected interests of seller to reclaim goods delivered under §2-507 of the Uniform Commercial Code;

(fff) the landlord's interest in any security deposit provided by any Loan Party under any Lease entered into in the ordinary course of business consistent with past practice;

(ggg) [Reserved];

(hhh) [Reserved]; and

(iii) Liens in favor of insurers (or other Persons financing the payment of insurance premiums) securing Indebtedness of the type described in clause (g) of the definition

of “Permitted Indebtedness” financing the premiums payable in respect of insurance policies issued by such insurers and existing on the Petition Date; provided that such Liens attach only to returned premiums in respect of such policies and are in existence on the Petition Date (and non-avoidable).

“Permitted Variances” has the meaning specified therefor in Section 7.02(t).

“Person” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

“Petition Date” means October [●], 2016.

“PIK Interest” has the meaning specified therefor in Section 2.04(a).

“PIK Loans” has the meaning specified therefor in Section 2.01(b).

“Plan” means a plan of reorganization of the Loan Parties in the Chapter 11 Cases (including all related schedules, supplements, exhibits and orders, as applicable), which shall be in form and substance satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

“Plan Effective Date” means the effective date of the Plan.

“Post-Default Rate” means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any portion of the DIP Loan then outstanding prior to an Event of Default plus 2.00%.

“Prepetition Permitted Priority Liens” means all Liens permitted by the Prepetition Term Loan A Financing Agreement and expressly senior to the Prepetition Term Loan A Liens existing on the Petition Date (solely to the extent any such permitted Liens were incurred and valid, binding, enforceable, properly perfected, and nonavoidable as of the Petition Date).

“Prepetition Term Loan A” means the loans and other credit extensions (including the revolving loans and issuance of letters of credit) made by the Prepetition Term Loan A Lenders pursuant to the Prepetition Term Loan A Financing Agreement.

“Prepetition Term Loan A Agent” means Cerberus, in its capacity as administrative agent and collateral agent under the Prepetition Term Loan A Financing Agreement, together with its successors and assigns in such capacity.

“Prepetition Term Loan A/B Intercreditor Agreement” means the Intercreditor Agreement, dated as of October 3, 2013, by and among the Prepetition Term Loan B Agent, the Prepetition Term Loan B Lenders, the Prepetition Term Loan A Agent, the Prepetition Term Loan A Lenders and the Loan Parties, pursuant to which the Liens granted to the Prepetition

Term Loan B Agent to secure the Prepetition Term Loan B Obligations are subordinated to the Liens granted to Prepetition Term Loan A Agent, as amended, restated, amended and restated, replaced or otherwise modified from time to time in accordance with the terms thereof.

“Prepetition Term Loan A Financing Agreement” means the Financing Agreement, dated as of the October 3, 2013, by and among the Prepetition Term Loan A Agent, Ares Capital Corporation, as documentation agent, the Prepetition Term Loan A Lenders, and the Loan Parties, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and subject to the Orders.

“Prepetition Term Loan A Lenders” means the Persons party to the Prepetition Term Loan A Financing Agreement as lenders (or letter of credit issuers, as the context dictates) from time to time.

“Prepetition Term Loan A Liens” means all Liens existing on the Petition Date which secure (or purport to secure) the Prepetition Term Loan A Obligations, which Liens have the priorities set forth in the Orders.

“Prepetition Term Loan A Loan Documents” means the “Loan Documents” as defined under the Prepetition Term Loan A Financing Agreement, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and subject to the Orders.

“Prepetition Term Loan A Obligations” means the “Obligations” as defined under the Prepetition Term Loan A Financing Agreement, which principal and letter of credit amounts (exclusive of interest, fees and other amounts) as of the Petition Date was not less than \$87,366,250.00.

“Prepetition Term Loan A Required Lenders” means the “Required Lenders” as defined in the Prepetition Term Loan A Financing Agreement..

“Prepetition Term Loan B” means the loans and other credit extensions made by the Prepetition Term Loan B Lenders pursuant to the Prepetition Term Loan B Financing Agreement.

“Prepetition Term Loan B Agent” means Cortland Capital Market Services LLC, a Delaware limited liability company, in its capacity as administrative agent and collateral agent under the Prepetition Term Loan B Financing Agreement, together with its successors and assigns in such capacity.

“Prepetition Term Loan B Financing Agreement” means the Financing Agreement, dated as of the October 3, 2013, by and among the Prepetition Term Loan B Agent, the Prepetition Term Loan B Lenders, and the Loan Parties, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under the Prepetition Term Loan B Financing Agreement, this Agreement and subject to the Orders.

“Prepetition Term Loan B Lenders” means the Persons party to the Prepetition Term Loan B Financing Agreement as lenders from time to time.

“Prepetition Term Loan B Liens” means all Liens existing on the Petition Date which secure the Prepetition Term Loan B Obligations (solely to the extent any such Liens were incurred and valid, binding, enforceable and properly perfected as of the Petition Date), which Liens have the priorities set out in the Orders; provided that (i) no such Lien shall at any time be extended to cover any additional property not subject thereto on the Petition Date and (ii) the principal amount of the Indebtedness secured by such Liens shall not be extended, renewed, refunded or refinanced.

“Prepetition Term Loan B Loan Documents” means the Prepetition Term Loan B Financing Agreement and all agreements, instruments and documents executed and delivered in connection therewith, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and subject to the Orders.

“Prepetition Term Loan B Obligations” means any obligations with respect to the Prepetition Term Loan B (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto), which as of the Petition Date was equal to \$35,662,159.70.

“Prepetition Term Loan C” means the loans made by the Prepetition Term Loan C Lenders pursuant to the Prepetition Term Loan C Financing Agreement.

“Prepetition Term Loan C Agent” means Apollo, in its capacity as administrative agent and collateral agent under the Prepetition Term Loan C Financing Agreement, together with its successors and assigns in such capacity.

“Prepetition Term Loan C/D Intercreditor Agreement” means the Intercreditor and Subordination Agreement, dated as of October 3, 2013, by and among the Prepetition Term Loan D Agent and the Prepetition Term Loan D Lenders, the Prepetition Term Loan C Agent and the Prepetition Term Loan C Lenders, the Prepetition Term Loan B Agent, the Prepetition Term Loan B Lenders, the Prepetition Term Loan A Agent, the Prepetition Term Loan A Lenders and the Loan Parties, pursuant to which the Liens granted to the Prepetition Term Loan C Agent and the Prepetition Term Loan D Agent to secure the Prepetition Term Loan C Obligations and the Prepetition Term Loan D Obligations, respectively, are subordinated in right of payment to the payment in full of the Prepetition Term Loan A Obligations and the Prepetition Term Loan B Obligations and to the Liens granted to the Prepetition Term Loan A Agent and the Prepetition Term Loan B Agent, as amended, restated, amended and restated, replaced or otherwise modified from time to time in accordance with the terms thereof.

“Prepetition Term Loan C Financing Agreement” means the Prepetition Term Loan Agreement, dated as of October 3, 2013, by and among the Prepetition Term Loan C Agent, Apollo, as a lender, Sun Garden Fresh Finance, LLC, a Delaware limited liability company, as a lender, and the Loan Parties, as amended, restated, amended and restated,

refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and the Orders.

“Prepetition Term Loan C Lenders” means the Persons party to the Prepetition Term Loan C Financing Agreement as lenders from time to time.

“Prepetition Term Loan C Loan Documents” means the Prepetition Term Loan C Financing Agreement and all agreements, instruments and documents executed and delivered in connection therewith, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and the Orders.

“Prepetition Term Loan C Obligations” means any obligations with respect to the Prepetition Term Loan C (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto), which as of the Petition Date was equal to \$19,804,836.85.

“Prepetition Term Loan D” means the loans made by the Prepetition Term Loan D Lenders pursuant to the Prepetition Term Loan D Financing Agreement.

“Prepetition Term Loan D Agent” means Apollo, in its capacity as administrative agent and collateral agent under the Prepetition Term Loan D Financing Agreement, together with its successors and assigns in such capacity.

“Prepetition Term Loan D Financing Agreement” means the Prepetition Term Loan Agreement, dated as of October 3, 2013, by and among the Prepetition Term Loan D Agent, the Prepetition Term Loan D Lenders and the Loan Parties, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time, in each case to the extent permitted under this Agreement and the Orders.

“Prepetition Term Loan D Lenders” means the Persons party to the Prepetition Term Loan D Financing Agreement as lenders from time to time.

“Prepetition Term Loan D Loan Documents” means the Prepetition Term Loan D Financing Agreement and all agreements, instruments and documents executed and delivered in connection therewith, as amended, restated, amended and restated, refinanced, replaced or otherwise modified from time to time in accordance with the terms thereof, in each case to the extent permitted under this Agreement and the Orders.

“Prepetition Term Loan D Obligations” means any obligations with respect to the Prepetition Term Loan D (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto), which as of the Petition Date was equal to \$51,944,897.38.

“Pro Rata Share” means the percentage obtained by dividing (i) such DIP Lender’s DIP Loan Commitment, by (ii) the Total DIP Loan Commitment, provided that if the Total DIP Loan Commitment has been reduced to zero, the numerator shall be the aggregate

unpaid principal amount of such DIP Lender's portion of the DIP Loan and the denominator shall be the aggregate unpaid principal amount of all DIP Loans.

“Purchase Option” has the meaning set forth in the Orders.

“Qualified Equity Interests” means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

“Receipts Line” has the meaning specified therefor in Section 7.02(t).

“Register” has the meaning specified therefor in Section 12.07(d).

“Registered Loans” has the meaning specified therefor in Section 12.07(d).

“Regulation T,” “Regulation U” and “Regulation X” mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

“Related Fund” means, with respect to any Person, (i) an Affiliate of such Person, or (ii) a fund or account managed or advised by (A) such Person or (B) an Affiliate of or investment manager or adviser to such Person.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or real property.

“Remedial Action” means all actions required by Environmental Laws taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, investigate or in any other way address Hazardous Materials; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the environment; (c) restore or reclaim natural resources of the environment; (d) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (e) perform any other actions authorized by 42 U.S.C. § 9601 et seq.

“Remedies Notice Period” has the meaning ascribed to such term in the Orders, as applicable.

“Replacement DIP Lender” has the meaning specified therefor in Section 12.02(b).

“Reportable Event” means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

“Required DIP Lenders” means DIP Lenders whose Pro Rata Shares aggregate more than 50%.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restaurant” means a restaurant owned and operated by the Loan Parties.

“Restaurant Leases” means, collectively, all leases or subleases of restaurants entered into by Parent and its Subsidiaries, in each case as lessee or sublessee thereunder and in each case as the same is from time to time amended, restated, modified or supplemented.

“Restructuring Support Agreement” means that certain Forbearance and Restructuring Support Agreement dated as of [●], 2016 by and among the Loan Parties, each Prepetition Term Loan A Lender party thereto as a Consenting TLA Lender, each Prepetition Term Loan B Lender party thereto as a Consenting TLB Lender, each Prepetition Term Loan C Lender party thereto as a Consenting TLC Lender, each Prepetition Term Loan D Lender party thereto as a Consenting TLD Lender, each person party thereto as a Consenting Equity Holder, the Prepetition Term Loan A Agent, the Prepetition Term Loan B Agent, the Prepetition Term Loan C Agent, the Prepetition Term Loan D Agent and Sun Capital Partners Management IV, LLC.

“SEC” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

“Section 363 Order” means a final order issued by the Bankruptcy Court approving a Section 363 Sale, which such final order shall be in form and substance satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

“Section 363 Sale” means a sale of all or substantially all of the Loan Parties’ assets to the winning bidder at an Auction pursuant to Bankruptcy Code section 363 and the Section 363 Order.

“Secured Parties” means the DIP Lenders and the DIP Agents.

“Securities Act” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“Securitization” has the meaning specified therefor in Section 12.07(j).

“Security Agreement” means a Pledge and Security Agreement, in form and substance reasonably satisfactory to Required DIP Lenders, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties, substantially in the form of Exhibit B, securing the DIP Obligations and delivered to the Collateral Agent.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person on a going concern basis is not less than the total amount of the liabilities of such Person, (b) the present fair salable value of the assets of such Person on a going concern basis is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“Sponsor Subordinated Debt” means, collectively, any Indebtedness (including without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto) owing to an Affiliate of Sun incurred prior to and outstanding on the Petition Date.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of The McGrawHill Companies, Inc. and any successor thereto.

“Stated Maturity Date” means October [●], 2017.

“Subordinated Indebtedness” means all Indebtedness (including, without limitation, the Prepetition Term Loan C Obligations, the Prepetition Term Loan D Obligations and any Sponsor Subordinated Debt) of any Loan Party incurred prior to and existing on the Petition Date which has been expressly subordinated in right of payment to all Prepetition Term Loan A Obligations and Prepetition Term Loan B Obligations.

“Subsidiary” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person; provided, that Associated Concepts Group, LLC shall not be deemed to be a Subsidiary.

“Sun” means Sun Garden Fresh, LLC.

“Sun Manager” means Sun Capital Partners Management IV, LLC.

“Superpriority Claims” means, collectively, all superpriority administrative expense claims (having the priorities set forth in the Orders) of (a) the DIP Agents and the DIP Lenders on account of the DIP Obligations, (b) the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders on account of the Prepetition Term Loan A Obligations and (c) the Prepetition Term Loan B Agent and the Prepetition Term Loan B Lenders on account of the Prepetition Term Loan B Obligations, which claims shall be entitled to the benefits of section 364(c)(1) of the Bankruptcy Code, having a superpriority over any and all administrative expenses of the kind that are specified in sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out.

“Taxes” or “taxes” has the meaning specified therefor in Section 2.09(a).

“Termination Event” means (a) a Reportable Event with respect to any Employee Plan, (b) any event that causes any Loan Party to incur liability (including any such liability that a Loan Party is liable for with respect to any ERISA Affiliate) under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, (c) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings by the PBGC to terminate an Employee Plan, or (e) any other event or condition which could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan.

“Test Date” means, for all purposes hereunder, the second Sunday of each two week period commencing with the second full week after the Closing Date (which such first “Test Date”, for the avoidance of doubt, shall be October 23, 2016).

“Test Period” means, with respect to each Test Date, the cumulative period commencing on the Petition Date and ending on such Test Date.

“TLA Event of Default” has the meaning specified therefor in the Orders.

“Total DIP Loan Commitment” means the sum of the amounts of the DIP Lenders’ DIP Loan Commitments.

“Total Receipts Variance” has the meaning specified therefor in Section 7.02(t).

“Trademark Security Agreement” has the meaning specified therefor in the Security Agreement.

“Transferee” has the meaning specified therefor in Section 2.09(a).

“Treasury Rate” means, as of any date of determination, the yield to maturity as of such date of determination of United States Treasury securities with a constant maturity (as

compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date of determination until the second anniversary of the Closing Date.

“Ultimate Parent” means Garden Fresh Restaurant Intermediate Holding, LLC, a Delaware limited liability company.

“Uniform Commercial Code” has the meaning specified therefor in Section 1.04.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001).

“US Dollars”, “US Dollar”, “US\$” and the symbol “\$” each means lawful currency of the United States of America.

“Variance Report” has the meaning specified therefor in Section 7.01(a)(xxi).

“WARN” has the meaning specified therefor in Section 6.01(z).

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 word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (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, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and (f) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Except as specified in Section 4.03(d) hereof, any reference herein or in any other DIP Loan Document to “paid in full” or words of similar import (including, without limitation, any words qualified by “in cash”) relating to the satisfaction or repayment in full of the DIP Obligations shall mean the repayment in full in cash of all DIP Obligations other than unasserted contingent indemnification DIP Obligations.

Section 1.03 Certain Matters of Construction. References in this Agreement to “determination” by any DIP Agent or the Required DIP Lenders include good faith estimates by such DIP Agent or the Required DIP Lenders (in the case of quantitative determinations) and good faith beliefs by such DIP Agent or the Required DIP Lenders (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist (provided that the DIP Agents or the Required DIP Lenders shall not be deemed to have any knowledge of such an Event of Default unless the DIP Agents or the Required DIP Lenders have actual knowledge or have received written notice thereof) at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement and the Orders or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required DIP Lenders and, to the extent expressly required hereunder, the Prepetition Term Loan A Agent and/or the Prepetition Term Loan A Required Lenders. Any Lien referred to in this Agreement or any other DIP Loan Document as having been created in favor of any DIP Agent, any agreement entered into by any DIP Agent pursuant to this Agreement or any other DIP Loan Document, any payment made by or to or funds received by any DIP Agent pursuant to or as contemplated by this Agreement or any other DIP Loan Document, or any act taken or omitted to be taken by any DIP Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the DIP Agents and the DIP Lenders. Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other DIP Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer’s duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP applied on a basis consistent with those used in preparing the Financial Statements. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded. Notwithstanding anything to

the contrary contained herein, to the extent a calculation or financial statement item contained herein must be in compliance with GAAP, it is understood and agreed by all parties that Non-Financing Leases shall be treated as operating leases regardless of the GAAP treatment and this aberration from GAAP is permitted and consented to by the Required DIP Lenders. Notwithstanding anything in this Agreement to the contrary, any change in GAAP or the application or interpretation thereof that would require operating leases to be treated in the same manner as a capital lease shall not be given effect in the definitions of Indebtedness or Liens or any related definitions or in the computation of any financial covenant.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the “Uniform Commercial Code”) and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Collateral Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided, however, that with respect to a computation of fees or interest payable to any DIP Agent or DIP Lender, such period shall in any event consist of at least one full day.

## ARTICLE II

### THE LOAN

#### Section 2.01 DIP Loan Commitments.

(a) Subject to the terms and conditions of this Agreement, the Orders and the Approved Budget, and in reliance upon the representations and warranties set forth herein, each DIP Lender agrees (severally, not jointly) to make the following advances to the Borrower (each a “DIP Loan Advance”) in respect of the DIP Loan: (i) an initial DIP Loan Advance on the Closing Date in an amount equal to such DIP Lender’s Pro Rata Share of an aggregate principal amount not exceeding \$1,000,000 (the “Initial DIP Loan”) and (ii) one or more additional DIP Loan Advances in an amount equal to such DIP Lender’s Pro Rata Share of an aggregate principal amount not exceeding \$1,000,000 unless otherwise agreed (the “Delayed-Draw DIP Loans”), in each case, on any Business Day during the Availability Period as follows (x) a DIP Loan Advance in an aggregate principal amount equal to \$2,000,000 on or about the date on which the Final Order is entered, (y) on the date of consummation of the transaction contemplated by Restructuring Support Agreement, a DIP Loan Advance in an aggregate principal amount equal to \$500,000 and (z) on any date after the DIP Loan Advance described in clause (x), to the extent of an increase in aggregate DIP Loan Commitments pursuant to the terms hereof, a DIP Loan Advance in an aggregate principal amount of such increase. Each

Borrowing shall consist of DIP Loan Advances made simultaneously by the DIP Lenders in accordance with their respective Pro Rata Share of the Total DIP Loan Commitment, provided, however, in no event shall any DIP Lender be required to make any DIP Loan Advance in an amount, when taken together with all other DIP Loan Advances made hereunder by such DIP Lender, that exceeds such DIP Lender's DIP Loan Commitment. Each DIP Loan shall only be required to be made, and may only be requested by the Borrower, if, and only if, the Approved Budget shows a need for such amounts in the immediately subsequent week, as determined by the Required DIP Lenders.

(b) Each DIP Lender also severally agrees that, from and after the date of any PIK Interest payment, the amount of such PIK Interest payment shall be an additional loan to the Borrower by such DIP Lender in a principal amount equal to such DIP Lender's Pro Rata Share of such PIK Interest payment (all such PIK Interest payments from time to time, collectively, the "PIK Loans").

(c) Any principal amount of the DIP Loan which is repaid or prepaid may not be reborrowed.

(d) At the written request of the Borrower, the DIP Lenders may choose to increase the aggregate DIP Loan Commitments in an additional amount (i) in their sole discretion, not to exceed \$500,000 in the aggregate together with any outstanding Collateral Agent Advance provided under Section 10.08(a), (ii) in their discretion, with the consent of the Prepetition Term Loan A Required Lenders, not to exceed \$4,500,000 in the aggregate and (iii) in their sole discretion, that is required solely for purposes of making any adequate protection payments to the Prepetition Term Loan A Lenders as required pursuant to the applicable Order.

### Section 2.02 Making the DIP Loans.

(a) For each Borrowing, the Borrower shall give the Administrative Agent prior written notice (in substantially the form of Exhibit C hereto (a “Notice of Borrowing”)), not later than 12:00 noon (New York City time) on the date which is three (3) Business Days prior to the proposed date of Borrowing (or such shorter period as the Required DIP Lenders and the Administrative Agent are willing to accommodate). Such Notice of Borrowing shall specify the proposed date of Borrowing, which must be a Business Day, and the account of the Borrower (including wiring instructions) into which any of the DIP Loan proceeds are to be distributed. The Administrative Agent and the DIP Lenders may act without liability upon the basis of written or telecopied notice believed by the Administrative Agent in good faith to be from the Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Borrower to the Administrative Agent). The Administrative Agent and each DIP Lender shall be entitled to rely conclusively on any Authorized Officer’s authority to request the Initial DIP Loan on behalf of the Borrower until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the DIP Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. Each DIP Loan requested hereunder shall be in incremental amounts equal to \$1,000,000; provided, however, a requested DIP Loan may be lower to the extent any remaining DIP Loan Commitment is less than \$1,000,000.

(b) Any DIP Loan under this Agreement shall be made by each DIP Lender on the relevant date of Borrowing in the amount of such DIP Lender’s DIP Loan Commitment, it being understood that no DIP Lender shall be responsible for any default by any other DIP Lender in that other DIP Lender’s obligations to make a DIP Loan in the amount of such DIP Lender’s DIP Loan Commitment, nor shall the DIP Loan Commitment of any DIP Lender be increased or decreased as a result of the default by any other DIP Lender in that other DIP Lender’s obligation to make a DIP Loan in the amount of such DIP Lender’s DIP Loan Commitment, and each DIP Lender shall be obligated to make the DIP Loan required to be made by it by the terms of this Agreement regardless of the failure to do so by any other DIP Lender. Following receipt of a Notice of Borrowing, the Administrative Agent shall notify each DIP Lender of its Pro Rata Share of such Borrowing. Each DIP Lender shall send its Pro Rata Share of such Borrowing to the Administrative Agent at the Administrative Agent’s Account by wire transfer of immediately available funds no later than 12:00 noon on the proposed Borrowing date. Upon receipt of all such requested funds and confirmation of the conditions precedent being met, Administrative Agent shall send the funds to the Borrower at the account specified in the Notice of Borrowing.

### Section 2.03 Repayment of DIP Loans; Evidence of Debt.

(a) The entire outstanding unpaid principal amount of the DIP Loan and all accrued and unpaid interest thereon and fees and expenses hereunder, shall be due and payable on the Final Maturity Date or, if earlier, the date of acceleration in accordance with the terms hereto.

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

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

(d) The entries made in the accounts maintained pursuant to Section 2.03(c) or Section 2.03(d) shall, absent manifest error, be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any DIP Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the DIP Loan in accordance with the terms of this Agreement. If there is any conflict between the accounts maintained by the DIP Lender pursuant to Section 2.03(b) and the accounts maintained by the Administrative Agent pursuant to Section 2.03(c), the accounts maintained by the Administrative Agent shall control.

(e) Any DIP Lender may request that the DIP Loan made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such DIP Lender a promissory note payable to the order of such DIP Lender (or, if requested by such DIP Lender, to such DIP Lender and its registered assigns) in a form reasonably acceptable to the Borrower and requesting DIP Lender. Thereafter, the DIP Loan evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(f) The Total DIP Loan Commitments shall be permanently reduced by an amount equal to the amount of each DIP Loan Advance extended upon the making of such DIP Loan Advance and each DIP Lender's DIP Loan Commitment shall be permanently reduced on a pro rata basis with the amount of such DIP Lender's DIP Loan Advance. Notwithstanding the foregoing, all of the DIP Commitments shall automatically terminate at the earlier of (x) 5:00 p.m., New York time, on [●]<sup>2</sup>, 2016 if the Closing Date shall have not occurred by such time and (y) upon the occurrence of a Change of Control.

#### Section 2.04 Interest.

(a) Interest Rate. The DIP Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of each advance of the DIP Loan until repaid, at a rate per annum equal to 15.50%, consisting solely of paid-in-kind interest, which amount shall be added to the principal amount of the DIP Loan pursuant to clause (c) below ("PIK Interest").

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<sup>2</sup> NTD: This date should be 5 Business Days after the Petition Date.

(b) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, the DIP Loans and all fees, indemnities or any other DIP Obligations of the Loan Parties under this Agreement and the other DIP Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate. For the avoidance of doubt, Post-Default Rate interest in excess of the rate of interest then otherwise applicable shall be due and payable in cash.

(c) Interest Payment. Interest on the DIP Loan shall accrue monthly and shall be paid in kind by being added to the principal amount of the DIP Loan monthly, in arrears, on the first Business Day of the next succeeding calendar month, after which time such PIK Interest amounts shall be considered principal of the DIP Loan for all purposes under this Agreement and shall be payable at maturity (whether upon demand, by acceleration or otherwise), provided, that any interest at the Post-Default Rate (in excess of the rate of interest that would have otherwise been applicable) shall be payable on demand, in cash and paid by wire transfer of immediately available US Dollar funds to the Administrative Agent's Account.

(d) General. All interest on the DIP Loan shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Reduction of DIP Loan Commitments; Prepayment of DIP Loan.

(a) Reduction of DIP Loan Commitments. The Total DIP Loan Commitment shall terminate upon the making of the DIP Loans on or after the Closing Date.

(b) Optional Prepayment. The Borrower may not voluntarily prepay the principal of the DIP Loan, in whole or in part, without the prior written consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders provided that, in the event of a 100% refinancing of the DIP Loan Obligations, such consent shall only be required from the Required DIP Lenders (in which case, prior notice shall be sent to the Administrative Agent at least one Business Day prior to such prepayment).

(c) Mandatory Prepayment.

(i) [Reserved.]

(ii) [Reserved.]

(iii) [Reserved.]

(iv) [Reserved]

(v) Immediately upon any (A) Disposition (other than with respect to any Lease, addressed in clause (B) below) by any Loan Party or its

Subsidiaries (excluding a Permitted Disposition of the type described in clauses (a), (b), (c), (d), (f), (g), (h), (k), (l) and (p) (and, with respect to clause (p), not to exceed the \$500,000 provided therein) of the definition of Permitted Disposition), the Borrower shall prepay the outstanding principal amount of, first, the Prepetition Term Loan A Obligations in accordance with the Prepetition Term Loan A Financing Agreement, and, second, if the Prepetition Term Loan A Obligations have been repaid in full in cash, the DIP Loan in accordance with clause (d) below and (B) Disposition with respect to any Lease by any Loan Party or its Subsidiaries, the Borrower shall repay the outstanding principal amount of, first, the DIP Loan in accordance with clause (d) below and, second, if the DIP Loan has been repaid in full in cash, the Prepetition Term Loan A Obligations in accordance with the terms in the Prepetition Term Loan A Financing Agreement, in each case, under clauses “first” and “second” under clauses (A) and (B), in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition. Nothing contained in this Section 2.05(c)(v) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than a Permitted Disposition.

- (vi) Immediately upon the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), the Borrower shall, with 100% of the Net Cash Proceeds thereof, prepay the outstanding principal amount of, first, the Prepetition Term Loan A Obligations in accordance with the Prepetition Term Loan A Financing Agreement, and, second, if the Prepetition Term Loan A Obligations have been repaid in full in cash, the DIP Loan in accordance with clause (d) below. The provisions of this Section 2.05(c)(vi) shall not be deemed to be implied consent to any such issuance or incurrence of Indebtedness otherwise prohibited by the terms and conditions of this Agreement. Notwithstanding the foregoing, the requirement in this Section 2.05(c)(vi) to prepay the Prepetition Term Loan A Obligations prior to payment of the DIP Obligations shall not apply to the proceeds of any Indebtedness issued or incurred for the purposes of refinancing 100% of the outstanding DIP Obligations and any Net Cash Proceeds of such Indebtedness shall first be used to prepay the outstanding DIP Obligations.
- (vii) Immediately upon the receipt by any Loan Party or any of its Subsidiaries of any (A) Extraordinary Receipts (other than with respect to any Lease), the Borrower shall prepay the outstanding principal of first, the Prepetition Term Loan A Obligations in accordance with the terms in the Prepetition Term Loan A Financing Agreement, and second, if the Prepetition Term Loan A Obligations have been repaid in full in cash, the DIP Loan in accordance with clause (d) below, and (B) Extraordinary Receipts with respect to any Lease, the Borrower shall prepay the outstanding principal of first, the DIP Loan in accordance with clause (d) below, and second, if

the DIP Loan has been repaid in full in cash, the Prepetition Term Loan A Obligations in accordance with the terms in the Prepetition Term Loan A Financing Agreement, in each case under clauses “first” and “second” of clauses (A) and (B), in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable and documented fees, costs and expenses incurred in collecting such Extraordinary Receipts.

(d) Application of Payments; DIP Lender Option to Decline Mandatory Prepayments. Borrower shall provide the Administrative Agent and the Prepetition Term Loan A Agent at least five (5) Business Days prior written notice of any mandatory prepayment required under Section 2.05(c) above, and each such notice shall specify the reason for the prepayment and shall include a detailed calculation of the amount required to be prepaid hereunder. Upon receipt of each such notice, Administrative Agent shall promptly notify the DIP Lenders of the mandatory prepayment, and in the event that each DIP Lender shall have the right in its sole discretion to decline such prepayment by sending notice of such to the Administrative Agent at least two (2) Business Days prior to the date of prepayment. If any DIP Lender fails to decline such prepayment at least two (2) Business Days prior to the date of prepayment, then such DIP Lender will be deemed to have accepted the prepayment. Each prepayment required to be made pursuant to Section 2.05(c) above that is not timely declined by a DIP Lender shall be paid by Borrower and applied to such DIP Lender’s Pro Rata Share of the DIP Loan. Any prepayment proceeds timely declined by a DIP Lender may be retained by the Borrower. Notwithstanding any other provision contained herein to the contrary, the DIP Agents and the DIP Lenders acknowledge and agree that, to the extent of any inconsistency between this Agreement and the terms of any Lease with respect to the application and use of any casualty or condemnation proceeds received by any tenant under such Lease which is a Borrower under this Agreement, the terms of such Lease shall prevail and no Borrower shall be required to be in default of any such Lease in order to comply with this Agreement.

(e) Interest and Fees. Any prepayment made on the DIP Loan pursuant to this Section 2.05 shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment and (ii) the payment of all fees and expenses accrued to such date pursuant to this Agreement and the other DIP Loan Documents.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

#### Section 2.06 Fees.

(a) [Reserved]

(b) Audit and Collateral Monitoring Fees. The Borrower acknowledges that pursuant to Section 7.01(f), representatives of the Required DIP Lenders may visit any or all of the Loan Parties and/or conduct audits, inspections, appraisals and/or valuations of any or all of the Loan Parties in a manner so as to not unduly disrupt the business of the Loan Parties, provided, that, if the Required DIP Lenders elect to exercise their rights hereunder, they shall provide to the Prepetition Term Loan A Agent reasonable prior notice in order for the Prepetition

Term Loan A Agent or the Prepetition Term Loan A Lenders to participate in any audits, inspections, appraisals and/or valuations. The Borrower agrees to pay the reasonable out-of-pocket cost of all visits, audits, inspections, appraisals and valuations conducted by a third party on behalf of the DIP Agents or the Required DIP Lenders. The foregoing notwithstanding, so long as no Event of Default has occurred and is continuing, the Borrower shall not be required to pay for more than one such visit, audit or inspection during any Fiscal Year.

(c) Fee Letter. As and when due and payable under the terms of the Fee Letter, the Borrower shall pay the fees and amounts set forth in the Fee Letter. Such fees and amounts shall be fully earned when paid and should not be refundable under any circumstance.

Section 2.07 [Reserved.]

Section 2.08 [Reserved.]

Section 2.09 Taxes.

(a) Any and all payments by any Loan Party hereunder or under any other DIP Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (“Taxes” or “taxes”), except for (i) taxes imposed on the net income (however denominated) (or franchise taxes imposed in lieu thereof) of any DIP Agent or any DIP Lender (or any transferee or assignee thereof, including a participation holder (any such entity, a “Transferee”)) or, in the case of a pass-through entity, any of its beneficial owners by the United States or the jurisdiction in which such Person is organized or has its principal lending office, or with which such person has any other present or former connection (other than a connection arising solely from entering into, receiving any payment under or enforcing its rights under this Agreement or any other DIP Loan Document), (ii) any branch tax profits imposed by the United States or any similar tax imposed by any other jurisdiction in which such Loan Party is located or (iii) any U.S. federal withholding taxes imposed under FATCA (each such tax, an “Excluded Tax”), (all nonexcluded taxes, levies, imposts, deductions, charges withholdings and liabilities, collectively or individually, imposed on any payment by any Loan Party or on account of any DIP Obligation hereunder, “Indemnified Taxes”). If any Loan Party shall be required to deduct any Indemnified Taxes from or in respect of any sum payable hereunder to any DIP Agent or any DIP Lender (or any Transferee), (i) the sum payable shall be increased by the amount (an “Additional Amount”) necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.09) such DIP Agent or such DIP Lender (or such Transferee) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any present or future stamp, documentary, intangibles, transfer, recording or filing taxes or any other excise or property taxes, charges or similar taxes or levies that arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security

interest under, or otherwise with respect to, this Agreement or any other DIP Loan Document (“Other Taxes”). Each Loan Party shall deliver to each DIP Agent and each DIP Lender official receipts in respect of any Indemnified Taxes or Other Taxes payable hereunder promptly after payment of such Indemnified Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each DIP Agent and each DIP Lender harmless from and against Indemnified Taxes and Other Taxes (including, Indemnified Taxes and Other Taxes imposed on any amounts payable under this Section 2.09) paid by such Person, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes.

(d) Each DIP Lender (or Transferee) that is organized under the laws of a jurisdiction outside the United States (a “Non-U.S. Lender”) agrees that it shall, no later than the Closing Date deliver to the Borrower or the Administrative Agent (who shall promptly provide a copy thereof to the Borrower) (or, in the case of a participant, to the DIP Lender granting the participation only) a properly completed and duly executed copy of either U.S. Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (including the appropriate attachments thereto) or any subsequent versions thereof or successors thereto, in each case claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax and payments of interest hereunder along with any other appropriate documentation establishing such exemption or reduction. If a payment made to any DIP Lender by or on account of any DIP Loan Documents hereunder would be subject to U.S. federal withholding Tax imposed under FATCA if such recipient fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such recipient shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such other documentation reasonably requested by the Borrower or the Administrative Agent sufficient for the Borrower or the Administrative Agent to comply with their obligations under FATCA and to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d)(i), “FATCA” shall include any amendment made to FATCA after the date of this Agreement. In addition, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code, such Non-U.S. Lender shall provide a certificate to the Administrative Agent and the Borrower in which it represents to the Administrative Agent and the Borrower that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Internal Revenue Code is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of Parent and is not a controlled foreign corporation related to Parent (within the meaning of Section 864(d)(4) of the Internal Revenue Code), and such Non-U.S. Lender agrees that it shall promptly notify the Administrative Agent and the Borrower (or, in the case of a participant, the DIP Lender granting the participation only) in the event any such representation is no longer accurate. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a participation holder, on or before the date such participation holder becomes

a Transferee hereunder) and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office (a “New Lending Office”). In addition, such Non-U.S. Lender shall deliver such forms within 20 days after receipt of a written request therefor from the Administrative Agent, the assigning DIP Lender or the DIP Lender granting a participation, as applicable. If the lapse of time or a change in circumstances renders a previous certification obsolete or inaccurate in any material respect, the Non-U.S. Lender shall deliver to the Administrative Agent (who shall promptly deliver a copy thereof to the Borrower) (or, in the case of a participant, to the DIP Lender granting the participation only) new, properly completed and duly executed copies of the applicable Internal Revenue Service Form establishing such exemption or reduction and any related documentation as may be required to establish such Non-U.S. Lender’s entitlement to a continued exemption from or reduction in United States withholding tax if such Non-U.S. Lender or beneficial owner continues to be so entitled.

- (i) Each DIP Lender (or Transferee) and DIP Agent that is a “United States person” (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) (each a “U.S. Lender”) agrees that it shall, no later than the Closing Date (or, in the case of a DIP Lender which becomes a party hereto pursuant to Section 12.07 after the Closing Date, promptly after the date upon which such DIP Lender becomes a party hereto) deliver to the Administrative Agent (who shall promptly provide a copy thereof to the Borrower or, in the case of a participant, to the DIP Lender granting the participation only) a complete and duly executed copy of Internal Revenue Service Form W-9 or successor form certifying that such DIP Lender (or Transferee) is not subject to United States backup withholding tax on the date it becomes a party to this Agreement. In addition, such U.S. Lender shall deliver such forms within 20 days after receipt of a written request therefore from the Administrative Agent, the assigning DIP Lender or the DIP Lender granting a participation, as applicable.
- (ii) Notwithstanding any other provision of this Section 2.09, a DIP Lender shall not be required to deliver any form pursuant to this Section 2.09(d) that such DIP Lender is not legally able to deliver. Upon written request by the Borrower, the Administrative Agent shall provide to the Borrower any U.S. Internal Revenue Service Form received by the Administrative Agent pursuant to clauses (d)(i) and (d)(ii) above.

(e) The Loan Parties shall not be required to indemnify any DIP Lender, DIP Agent or Transferee, or pay any additional amounts to any DIP Lender, DIP Agent or Transferee, in respect of United States Federal withholding or backup withholding tax pursuant to this Section 2.09 to the extent that (i) the obligation to withhold amounts with respect to United States Federal withholding or backup withholding tax existed on the date such DIP Lender, DIP Agent or Transferee became a party to this Agreement (or, in the case of a Transferee that is a participation holder, on the date such participation holder became a Transferee hereunder other than pursuant to an assignment request of Borrower under Section 2.12) or, with respect to payments to a New Lending Office, the date such DIP Lender, DIP Agent or Transferee

designated such New Lending Office with respect to a DIP Loan; provided, however, that this clause (i) shall not apply to the extent the indemnity payment or additional amounts any Transferee, or DIP Lender (or Transferee) would be entitled to receive (without regard to this clause (i)) do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation or transfer to such Transferee, or DIP Lender (or Transferee) making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation of a New Lending Office, or (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such DIP Lender or the Administrative Agent to comply with the provisions of clause (d) above.

(f) Any DIP Agent or any DIP Lender (or Transferee) claiming any indemnity payment or additional payment amounts payable pursuant to this Section 2.09 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount that may thereafter accrue, would not require such DIP Agent or such DIP Lender (or Transferee) to disclose any information such DIP Agent or such DIP Lender (or Transferee) deems confidential and would not, in the sole determination of such DIP Agent or such DIP Lender (or Transferee), be otherwise disadvantageous to such DIP Agent or such DIP Lender (or Transferee).

(g) If any DIP Agent or any DIP Lender (or a Transferee) determines in its good faith that it has received a refund of any Indemnified Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.09, it shall pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Party under this Section 2.09 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of such DIP Agent or such DIP Lender (or a Transferee), as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Administrative Agent or such DIP Lender (or a Transferee), agrees to repay the amount paid over to such DIP Agent or such DIP Lender (or a Transferee) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such DIP Agent or such DIP Lender (or a Transferee) in the event such DIP Agent or such DIP Lender (or a Transferee) is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any DIP Agent or any DIP Lender (or a Transferee) to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Loan Party or any other Person.

(h) The obligations of the parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the DIP Loan and all other amounts payable hereunder. Each party's obligations under this Section 2.09 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a DIP Lender and the repayment, satisfaction or discharge or all obligations under any DIP Loan Document.

Section 2.10 [Reserved].

Section 2.11 Manner of Payment. Except as this Agreement otherwise expressly provides, all payments on the DIP Loan (including repayments of principal and cash payments of interest) other than PIK Interest shall be made by wire transfer of immediately available US Dollar funds to the Administrative Agent's Account.

Section 2.12 Mitigation Obligations; Replacement of Lenders.

(a) If any DIP Lender requires the Borrower to pay any additional amounts under Section 2.09, then such DIP Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its DIP Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such DIP Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Section in the future, and (ii) would not subject such DIP Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such DIP Lender.

(b) If any DIP Lender requires the Borrower to pay any additional amounts under Section 2.09 and such DIP Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, then the Borrower may, at its sole expense and effort, upon notice to such DIP Lender and the Administrative Agent, require such DIP Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the other DIP Loan Documents to an assignee that shall assume such obligations (which assignee may be another DIP Lender, if a DIP Lender accepts such assignment); provided that:

- (i) the Borrower shall have paid to the DIP Agents any assignment fees specified in Section 12.07;
- (ii) such DIP Lender shall have received payment of an amount equal to the outstanding principal of its Loan, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other DIP Loan Documents (including any amounts under Section 2.09) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (iii) in the case of any such assignment resulting from payments required to be made pursuant to Section 2.09, such assignment will result in a reduction in such compensation or payments thereafter; and
- (iv) such assignment does not conflict with applicable law.

A DIP Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such DIP Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**ARTICLE III**

**[RESERVED]**

**ARTICLE IV**

**APPLICATION OF PAYMENTS; JOINT AND SEVERAL LIABILITY OF  
BORROWER**

Section 4.01 Payments; Computations and Statements.

(a) The Borrower will make each payment under this Agreement not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 2:00 p.m. (New York City time) on any Business Day will, if not credited on the Business Day received, be credited to the Loan Account on the next succeeding Business Day; provided that, solely for the purposes of Section 9.01(a), payments made by 5:00 p.m. (New York City time) on the day when due will be considered timely made. All payments shall be made by the Borrower without set-off, counterclaim, recoupment, deduction or other defense to the DIP Agents and the DIP Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the DIP Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any DIP Lender to such DIP Lender, in each case to be applied in accordance with the terms of this Agreement, provided that the Administrative Agent will cause to be distributed all interest and fees received from or for the account of the Borrower not less than once each month and in any event promptly after receipt thereof. The DIP Lenders and the Borrower hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrower with any amount due and payable by the Borrower under any DIP Loan Document. Each of the DIP Lenders and the Borrower agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrower shall be deemed a Loan hereunder made by the DIP Lenders to the Borrower, subject to Section 2.02 of this Agreement. The DIP Lenders and the Borrower confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrower as herein provided will be made as an accommodation to the Borrower and solely at the Administrative Agent's discretion, provided that the Administrative Agent shall from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrower with any amount due and payable under any DIP Loan Document. Whenever any payment to be made under any such DIP Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the immediately preceding Business Day. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) [Reserved.]

Section 4.02 Sharing of Payments. Subject to the senior Liens and enforcement rights and the other rights and remedies of the Prepetition Term Loan A Agent or the Prepetition Term Loan A Lenders set forth in the Orders and the Prepetition Term Loan A/B Intercreditor Agreement, as applicable, and except as provided in Section 2.02 hereof, if any DIP Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any DIP Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the DIP Lenders, such DIP Lender shall forthwith purchase from the other DIP Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing DIP Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing DIP Lender, such purchase from each DIP Lender shall be rescinded and such DIP Lender shall repay to the purchasing DIP Lender the purchase price to the extent of such recovery together with an amount equal to such DIP Lender's ratable share (according to the proportion of (i) the amount of such DIP Lender's required repayment to (ii) the total amount so recovered from the purchasing DIP Lender of any interest or other amount paid by the purchasing DIP Lender in respect of the total amount so recovered) and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (ii) any payment obtained by a DIP Lender as consideration for the assignment of or sale of a participation in its Pro Rata Share of the DIP Loan to any assignee or participant, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any DIP Lender so purchasing a participation from another DIP Lender pursuant to this Section 4.02 may, to the fullest extent permitted by law, exercise all of its rights (including the DIP Lender's right of set-off) with respect to such participation as fully as if such DIP Lender were the direct creditor of the Borrower in the amount of such participation.

Section 4.03 Apportionment of Payments. Subject to the senior Liens and enforcement rights and the other rights and remedies of the Prepetition Term Loan A Agent or the Prepetition Term Loan A Lenders set forth in the Orders and the Prepetition Term Loan A/B Intercreditor Agreement, as applicable, and subject to Section 2.02 hereof and to any written agreement among the DIP Agents and the DIP Lenders:

(a) all payments of principal and interest in respect of the outstanding DIP Loan, all payments of fees and all other payments in respect of any other DIP Obligations shall be allocated by the Administrative Agent among such of the DIP Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of the DIP Loan, as designated by the Person making payment when the payment is made.

(b) Subject to the proviso at the end of this clause, after the occurrence and during the continuance of an Event of Default, the Administrative Agent, upon the direction of the Required DIP Lenders, may apply all proceeds of the DIP Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the DIP Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the DIP Agents

until paid in full; (ii) second, ratably to pay the DIP Obligations in respect of any fees and indemnities then due and payable to the DIP Lenders until paid in full; (iii) third, ratably to pay interest then due and payable in respect of the DIP Loan and Collateral Agent Advances until paid in full; (iv) fourth, ratably to pay principal of the DIP Loan and Collateral Agent Advances until paid in full; and (v) fifth, to the ratable payment of all other DIP Obligations then due and payable; provided, that, in the event that the proceeds of such DIP Collateral are subject to Prepetition Term Loan A Liens or the Adequate Protection Liens of the Prepetition Term Loan A Agent or the Prepetition Term Loan A Lenders that, in any such case in this proviso, are senior to the DIP Liens, then such proceeds shall, first, repay the Prepetition Term Loan A Obligations until indefeasibly repaid in full in cash and, thereafter, as provided under subclauses (i) through (v) above.

(c) In each instance, so long as no Event of Default has occurred and is continuing, Section 4.03(b) shall not be deemed to apply to any payment by the Borrower specified by the Borrower to the Administrative Agent to be for the payment of DIP Obligations then due and payable under any provision of this Agreement or the prepayment of all or part of the principal of the DIP Loan in accordance with the terms and conditions of Section 2.05.

(d) Solely for purposes of Section 4.03(b), (other than clause (v)), “paid in full” means payment in cash of all amounts owing under the DIP Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, except to the extent that default or overdue interest (but not any other interest) and loan fees, each arising from or related to a default, are disallowed in any Insolvency Proceeding; provided, however, that for the purposes of clause (v), “paid in full” means payment in cash of all amounts owing under the DIP Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest, default interest, interest on interest, and expense reimbursement.

(e) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other DIP Loan Document (other than the Orders), it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 4.03 shall control and govern.

Section 4.04 [Reserved].

Section 4.05 [Reserved].

## ARTICLE V

### CONDITIONS TO LOAN

Section 5.01 Conditions Precedent to Effectiveness and Initial DIP Loans. This Agreement shall become effective as of the Business Day (the “Closing Date”) when each of the

following conditions precedent shall have been satisfied or waived in writing in a manner reasonably satisfactory to the Required DIP Lenders, and the obligations of the DIP Lenders to make the DIP Loans shall be subject to the satisfaction or waiver in writing of such conditions precedent in a manner reasonably satisfactory to the Required DIP Lenders:

(a) Payment of Fees, Etc. The Borrower shall have paid on or before the date of this Agreement all fees, costs, expenses and taxes then payable pursuant to Section 2.06 and Section 12.04.

(b) Representations and Warranties; No Event of Default.

(i) The representations and warranties contained in ARTICLE VI and in each other DIP Loan Document, certificate or other writing delivered to any DIP Agent or any DIP Lender pursuant hereto or thereto on or prior to the Closing Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Closing Date as though made on and as of such date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification)), and

(ii) No Default or Event of Default shall have occurred and be continuing on the Closing Date or would result from this Agreement or the other DIP Loan Documents becoming effective in accordance with its or their respective terms, or the making of the Initial DIP Loans (or other extensions of credit) under this Agreement.

(c) Legality. The making of such DIP Loan shall not contravene any law (including any Requirement of Law), rule or regulation applicable to any DIP Agent or any DIP Lender and shall not be enjoined, temporarily, preliminarily or permanently.

(d) Delivery of Documents. The DIP Agents shall have received on or before the Closing Date the following, each in form and substance reasonably satisfactory to the Required DIP Lenders and, unless indicated otherwise, dated the Closing Date:

(i) duly executed Security Agreement;

(ii) appropriate financing statements on Form UCC-1 to be duly filed in such office or offices as may be necessary or, in the opinion of the Required

DIP Lenders Agent, desirable to perfect the security interests purported to be created by each Collateral Document;

- (iii) copies of all effective financing statements which name as debtor any Loan Party and which are filed in the offices referred to in paragraph (ii) above, together with copies of such UCC-1 financing statements, none of which, except as otherwise agreed by the Collateral Agent, shall cover any of the DIP Collateral other than Permitted Liens and the results of searches for any intellectual property filing, tax Lien and judgment Lien filed against such Person or its property, which results, except as otherwise agreed to by the Collateral Agent, shall not show any such Liens other than Permitted Liens;
- (iv) [Reserved];
- (v) the Fee Letter, duly executed by the Borrower;
- (vi) the Intercompany Subordination Agreement, duly executed by each Loan Party;
- (vii) the Funds Flow Direction, duly executed by the parties thereto;
- (viii) a copy of the resolutions of each Loan Party, certified as of the Closing Date by an Authorized Officer thereof, authorizing (A) the borrowings hereunder and the transactions contemplated by the DIP Loan Documents to which such Loan Party is or will be a party, and (B) the execution, delivery and performance by such Loan Party of each DIP Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith;
- (ix) a certificate of an Authorized Officer of each Loan Party, certifying the names and true signatures of the representatives of such Loan Party authorized to sign each DIP Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;
- (x) a certificate of the appropriate official(s) of the jurisdiction of organization and except to the extent such failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect, each jurisdiction of foreign qualification of each Loan Party certifying as of a recent date not more than 45 days prior to the Closing Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions;

- (xi) a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 45 days prior to the Closing Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction;
- (xii) a copy of the Governing Documents of each Loan Party, together with all amendments thereto, certified as of the Closing Date by an Authorized Officer of such Loan Party;
- (xiii) an opinion of Morgan, Lewis and Bockius LLP, counsel to the Loan Parties, to the DIP Agents and the DIP Lenders;
- (xiv) a certificate of an Authorized Officer of each Loan Party, certifying as to the matters set forth in Section 5.01(b);
- (xv) a copy of (A) the Financial Statements and (B) updated financial projections for the 2017 Fiscal Year, which projections shall be reasonably satisfactory in form and substance to the DIP Lenders;
- (xvi) [Reserved];
- (xvii) [Reserved];
- (xviii) evidence of the insurance coverage required by Section 7.01 and the terms of each Security Agreement and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent (acting at the direction of the Required DIP Lenders) may reasonably request and of the type and nature typically maintained by a like business as the business of the Borrower, in each case, where reasonably requested by the Required DIP Lenders and where generally available in the market at regular rates;
- (xix) [Reserved];
- (xx) a certificate of an Authorized Officer of the Borrower stating that (x) each Material Contract in existence on the Petition Date remains in full force and effect, (y) unless disclosed, such Material Contracts have not been amended or otherwise modified, and (y) none of the Loan Parties has breached or defaulted in any material respects with respect to its obligations under such agreements;
- (xxi) an Internal Revenue Service Form W-9 or other applicable tax form completed and duly executed by the Borrower; and

(xxii) such other agreements, instruments, approvals, opinions and other documents, each reasonably satisfactory to the Required DIP Lenders, in form and substance, as the Required DIP Lenders may reasonably request.

(e) Material Adverse Effect. There shall not have occurred since December 31, 2015, any developments or events which individually or in the aggregate with other such circumstances has had or could reasonably be expected to have a Material Adverse Effect, other than the Chapter 11 Cases.

(f) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the DIP Loan or the conduct of the Loan Parties' business shall have been obtained and shall be in full force and effect;

(g) Proceedings; Receipt of Documents. All proceedings in connection with the making of the DIP Loan and the other transactions contemplated by this Agreement and the other DIP Loan Documents, and all documents incidental hereto and thereto, shall be reasonably satisfactory to the DIP Agents and the DIP Lenders, and the DIP Agents shall have received all such information and such counterpart originals or certified or other copies of such documents as the DIP Agents may reasonably request.

(h) Litigation. Other than the Chapter 11 Cases, there shall be no pending or threatened litigation, action, suit or other proceedings (private or governmental) with respect to or affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (A) could reasonably be expected to be adversely determined, and if adversely determined, could reasonably be expected to result in a Material Adverse Effect or (B) relates to this Agreement or any other DIP Loan Document or any transaction contemplated hereby or thereby. None of the Loan Parties holds any commercial tort claims in respect of which a claim has been filed in a court of law or a written notice by an attorney has been given to a potential defendant.

(i) Notices. The Administrative Agent shall have received a Notice of Borrowing in accordance with Section 2.02 hereof. The representations and warranties set forth in any Notice of Borrowing (or any certificate delivered in connection therewith) shall be deemed to be made again on and as of the date of the relevant DIP Loan and the acceptance of the proceeds thereof.

(j) Validity and Priority of DIP Liens. The Collateral Agent, for the benefit of the DIP Lenders, shall have a valid and perfected DIP Lien on and security interest in the DIP Collateral on the basis and with the priority set forth in the Orders.

(k) Budget. The Administrative Agent and the DIP Lenders shall have received the Initial Budget (attached as Exhibit D).

(l) First Day Motions. All first day motions filed by the Loan Parties and related orders entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and

substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Term Loan A Required Lenders.

(m) Motions and Documents. All motions and other documents to be filed with and submitted to the Bankruptcy Court related to the DIP Facility and the approval thereof shall be in form and substance reasonably satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.

(n) Interim Order. The Bankruptcy Court shall have entered the Interim Order within three (3) Business Days following the Petition Date.

Section 5.02 Conditions Precedent to DIP Loans made after the Closing Date. The obligation of each DIP Lender on any date to make any DIP Loan is subject to the satisfaction of each of the following conditions precedent:

(a) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in accordance with Section 2.02. The representations and warranties set forth in any Notice of Borrowing (or any certificate delivered in connection therewith) shall be deemed to be made again on and as of the date of the relevant DIP Loan and the acceptance of the proceeds thereof.

(b) Representations and Warranties; No Defaults. The following statements shall be true on such date, both before and after giving effect to such DIP Loan: (i) the representations and warranties set forth in Article VI and in each other DIP Loan Document, certificate or other writing delivered to any DIP Agent or DIP Lender pursuant hereto or thereto shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification)) and (ii) no Default or Event of Default shall have occurred and be continuing or would result from the making of any such DIP Loan on such date.

(c) Final Order. With respect to any DIP Loans made after the Closing Date, the Final Order shall have been entered approving the DIP Facility, which Final Order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Agents (at the direction of the Required DIP Lenders) and the Prepetition Term Loan A Required Lenders.

(d) Legality. The making of such DIP Loan shall not contravene any law (including any Requirement of Law), rule or regulation applicable to any DIP Agent or any DIP Lender and shall not be enjoined, temporarily, preliminarily or permanently.

(e) Material Adverse Effect. There shall not have occurred since December 31, 2015, any developments or events which individually or in the aggregate with other such circumstances has had or could reasonably be expected to have a Material Adverse Effect, other than the Chapter 11 Cases.

(f) Consistent with Budget. The making of such DIP Loan is in accordance with the Budget, or has otherwise been approved in writing by the Administrative Agent at the direction of the Required DIP Lenders.

(g) Additional Matters. The Borrower shall have delivered to the Administrative Agent such other documents and information with respect to the business, property, condition (financial or otherwise), legal, financial or corporate or similar affairs or operations of any Loan Party as the Administrative Agent, or DIP Lender through the Administrative Agent, may reasonably request, with copies thereof provided by the Borrower to the Prepetition Term Loan A Agent for delivery to the Prepetition Term Loan A Lenders.

(h) Exit Budget Condition. With respect to any Delayed-Draw DIP Loan described in Section 2.01(a)(ii)(y), the Exit Budget Condition (as defined in the Restructuring Support Agreement) shall have been satisfied and the TLB Buyer (as defined in the Restructuring Support Agreement) does not elect to terminate the TLB Sale Transaction (as defined in the Restructuring Support Agreement).

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the DIP Agents and the DIP Lenders on the Closing Date, the date each DIP Loan is made and each date of delivery of an Approved Budget as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, (ii) upon entry of the Orders, as applicable, has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrower, to make the Borrowings hereunder, and to execute and deliver each DIP Loan Document to which it is a party, and to consummate the transactions contemplated thereby, (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except, in the case of jurisdictions of foreign qualification, where the failure to be so qualified or in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (iv) is a debtor-in-possession in one of the Chapter 11 Cases.

(b) Authorization, Etc. Upon entry of the Orders, as applicable, the execution, delivery and performance by each Loan Party of each DIP Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene any of its Governing Documents or any applicable Requirement of Law or any Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any DIP Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties. The execution, delivery and performance by each Loan Party of each DIP Loan Document to which it is or will be a party will not contravene or result in a default under the Restaurant Leases, except as could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. Upon entry of the Orders, as applicable, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any DIP Loan Document to which it is or will be a party except for those which have been obtained and/or made.

(d) Enforceability of DIP Loan Documents. Upon entry of the Orders, as applicable, this Agreement is, and each other DIP Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(e) Capitalization; Subsidiaries. Schedule 6.01(e) is a complete and correct description of the name, jurisdiction of incorporation or organization and ownership of the outstanding Equity Interests of such Subsidiaries of the Parent in existence as of the Closing Date after giving effect to the transactions contemplated hereunder and under the other DIP Loan Documents. All of the issued and outstanding shares of Equity Interests of such Subsidiaries have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. Except as indicated on such Schedule, all such Equity Interests are owned by the Parent or one or more of its wholly-owned Subsidiaries, free and clear of all Liens except Permitted Liens.

(f) Litigation; Commercial Tort Claims. Except as set forth in Schedule 6.01(f) (or, in the case of any threatened litigation, action, suit or other proceeding, as separately disclosed in writing to the DIP Agents) and in the Chapter 11 Cases, (i) there is no pending or, to the actual knowledge of any Loan Party, threatened action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (A) could reasonably be expected to be adversely determined, and if adversely determined, could reasonably be expected to result in a Material Adverse Effect or (B) relates to this Agreement or any other DIP Loan Document or any transaction contemplated hereby or thereby and (ii) as of the Closing Date, none of the Loan Parties holds any commercial tort claims in

respect of which a claim has been filed in a court of law or a written notice by an attorney has been given to a potential defendant.

(g) Financial Condition.

(i) The Financial Statements, copies of which have been delivered to each DIP Agent and each DIP Lender, fairly present, in all material respects, the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. Since December 31, 2015 no event or development has occurred that has had or could reasonably be expected to result in a Material Adverse Effect except for the filing of the Chapter 11 Cases and the imposition of the automatic stay in connection therewith.

(ii) The Parent has heretofore furnished to each DIP Lender (A) a true and complete copy of the Approved Budget and (B) annual projected financial statements of the Parent and its Subsidiaries for the Fiscal Year ending in 2017. Such projections and the Approved Budget is believed by the Parent at the time furnished to be reasonable, shall have been prepared on a reasonable basis and in good faith by the Parent, and shall have been based on assumptions believed by the Parent to be reasonable at the time made and upon the best information then reasonably available to the Parent, and the Parent shall not be aware, as of the Closing Date, of any facts or information that would lead it to believe that such projections, as so updated, are incorrect or misleading in any material respect.

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law of any Governmental Authority, in each case, applicable to it or any of its property or assets, or (iii) any material term of any Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except in the case of clauses (ii) and (iii) to the extent such violations could not reasonably be expected to have a Material Adverse Effect, and no Default or Event of Default has occurred and is continuing.

(i) ERISA. Except as set forth on Schedule 6.01(i), or as could not reasonably be expected to result in a Material Adverse Effect, (i) each Employee Plan is in compliance with ERISA and the Internal Revenue Code, (ii) no Termination Event has occurred nor is reasonably expected to occur with respect to any Employee Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Employee Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service and delivered to the DIP Agents, is complete and correct and fairly presents the funding status of such Employee Plan, and, to the knowledge of the Loan Parties, since the date of such report there has been no material adverse change in such funding status, (iv) copies of each material agreement entered into with the PBGC, the U.S. Department of Labor or the

Internal Revenue Service with respect to any Employee Plan that is sponsored, maintained or contributed to by any Loan Party have been delivered to the DIP Agents, (v) no Employee Plan had an accumulated or waived funding deficiency or permitted decrease which would create a deficiency in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code at any time during the previous 60 months, and (vi) no Lien imposed under the Internal Revenue Code or ERISA exists or is likely to arise on account of any Employee Plan within the meaning of Section 412 of the Internal Revenue Code. Except as set forth on Schedule 6.01(i), no Loan Party or any of its ERISA Affiliates has incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability, except as could not reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any of its ERISA Affiliates nor any fiduciary of any Employee Plan has (A) engaged in a nonexempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code, (B) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (C) engaged in a transaction within the meaning of Section 4069 of ERISA or (D) incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. Except as could not reasonably be expected to result in a Material Adverse Effect, there are no pending or, to the best knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (1) any Employee Plan or its assets, (2) any fiduciary with respect to any Employee Plan, or (3) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as could not reasonably be expected to result in a Material Adverse Effect or as set forth on Schedule 6.01(i) or except as required by Section 4980B of the Internal Revenue Code, no Loan Party maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) which provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or coverage after a participant's termination of employment.

(j) Taxes, Etc. All Federal, material state and local tax returns and other reports required by applicable Requirements of Law to be filed by any Loan Party have been filed, or extensions have been obtained, and all taxes, assessments and other governmental charges imposed upon any Loan Party or any property of any Loan Party and which have become due and payable on or prior to the date hereof have been paid (other than taxes, assessments, or governmental charges in an aggregate amount at any one time not to exceed \$20,000), except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or

carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(l) Nature of Business.

(i) No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l) and business activities reasonably related or incidental thereto.

(ii) Each of the Parent and Holdings is a holding company and does not have any liabilities (other than liabilities arising or permitted under the DIP Loan Documents, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents), own any assets (other than the Equity Interests of other Loan Parties, dividends and distributions made on such Equity Interests and other de minimis assets) or engage itself in any operations or business other than actions required for compliance with the DIP Loan Documents and except as expressly permitted by the DIP Loan Documents.

(m) Adverse Agreements, Etc. On the Closing Date, no Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority (except to the extent contained in the Orders), which (either individually or in the aggregate) has, or could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent such failure to obtain or noncompliance could not reasonably be expected to result in a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, except to the extent caused by commencement of the Chapter 11 Cases, and there is no claim that any thereof is not in full force and effect, except to the extent such suspension, revocation, impairment, forfeiture or non-renewal could not reasonably be expected to result in a Material Adverse Effect.

(o) Properties.

Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all tangible property and assets material to its business, free and clear of all Liens, except Permitted Liens and except to the extent the failure to have such valid leasehold interests or licenses could not reasonably be expected to have a Material Adverse Effect. To

each Loan Party's knowledge, all such properties and assets are in good working order and condition, ordinary wear and tear and casualty and condemnation excepted.

- (i) Schedule 6.01(o) sets forth a complete and accurate list, as of the Closing Date, of the location, by state and street address, of all real property owned or leased by each Loan Party and identifies the interest (fee or leasehold) of such Loan Party therein, other than certain Leases that have been identified to the DIP Lenders in writing as locations the Loan Parties have ceased operations as of the Closing Date. As of the Closing Date, each Loan Party has valid leasehold interests in the leased properties described on Schedule 6.01(o), except to the extent the failure to have such valid leasehold interests could not reasonably be expected to have a Material Adverse Effect. Each such Lease is valid and enforceable in accordance with its terms in all material respects and is in full force and effect, except to the extent that the commencement of the Chapter 11 Cases constitutes a default under such leases or the failure of such Lease to be valid and enforceable or in full force and effect could not reasonably be expected to result in a Material Adverse Effect and except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws. No consent or approval of any landlord or other third party in connection with any such Lease is necessary for any Loan Party to enter into and execute the DIP Loan Documents (except with respect to the landlord waiver pursuant to Section 5.02(a)) to which it is a party, except as set forth on Schedule 6.01(o). As of the Closing Date and except in respect of the Chapter 11 Cases, no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default under any such Lease, except to the extent such event could not reasonably be expected to result in a Material Adverse Effect.

(p) Full Disclosure. Each Loan Party has disclosed to the DIP Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the other reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the DIP Agents in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. There is no contingent liability or fact that could reasonably be expected to result in a Material Adverse Effect which has not been set forth in a footnote included in the Financial Statements or a Schedule hereto or pursuant to the Chapter 11 Cases.

- (q) [Reserved].

(r) Environmental Matters. Except as set forth on Schedule 6.01(r), (i) the operations of each Loan Party and its Subsidiaries are in compliance with all Environmental Laws, except for any non-compliance that could not reasonably be expected to result in a Material Adverse Effect; (ii) there has been no Release at any of the properties owned, leased or operated by any Loan Party or any of its Subsidiaries, or, to the knowledge of any Loan Party or any of its Subsidiaries, at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries which could reasonably be expected to result in a Material Adverse Effect; (iii) no Environmental Action has been asserted against any Loan Party or any of its Subsidiaries nor does any Loan Party or any of its Subsidiaries have knowledge or notice of any threatened or pending Environmental Action against any Loan Party or any of its Subsidiaries which could reasonably be expected to result in a Material Adverse Effect; (iv) no Environmental Actions have been asserted against any Loan Party or any of its Subsidiaries and no Loan Party or any of its Subsidiaries has knowledge or notice of any threatened or pending Environmental Actions related to any facilities that may have received Hazardous Materials generated by any Loan Party or any of its Subsidiaries which could reasonably be expected to result in a Material Adverse Effect; (v) no property now or formerly owned, leased or operated by a Loan Party or any of its Subsidiaries has been used as a treatment or disposal site for any Hazardous Material, except to the extent that any such use could not reasonably be expected to result in a Material Adverse Effect; (vi) no Loan Party or any of its Subsidiaries has failed to report to the proper Governmental Authority the occurrence of any Release of Hazardous Materials which is required to be so reported under any Environmental Laws and which could reasonably be expected to result in a Material Adverse Effect; (vii) each Loan Party or each Subsidiary thereof holds all Environmental Permits in connection with the operation of the business carried on by it, except for such Environmental Permits as to which any Loan Party's or any of its Subsidiary's failure to maintain or comply with could not reasonably be expected to result in a Material Adverse Effect; and (viii) no Loan Party or any of its Subsidiaries has received any notification pursuant to any Environmental Laws that (A) any Remedial Action work, repairs, construction or Capital Expenditures are required to be made by a Loan Party or any of its Subsidiaries in respect of any of its properties as a condition of continued compliance with any Environmental Laws, or any Environmental Permit issued pursuant thereto or (B) any Environmental Permit referred to above is about to be reviewed, made, subject to limitations or conditions, revoked, withdrawn or terminated, in each case of clauses (A) and (B), except as could not reasonably be expected to result in a Material Adverse Effect.

(s) Insurance. Each Loan Party keeps its property adequately insured and maintains (i) insurance to such extent and against such risks, including fire, as is customary with companies in the same or similar businesses, (ii) workmen's compensation insurance in the amount required by applicable law, (iii) public liability insurance, which shall include product liability insurance, in the amount customary with companies in the same or similar business against claims for personal injury or death on properties owned, occupied or controlled by it, and (iv) such other insurance as may be required by law or as may be reasonably required by the Required DIP Lenders (including, without limitation, against larceny, embezzlement or other criminal misappropriation). Schedule 6.01(s) sets forth a list of all insurance maintained by each Loan Party on the Closing Date.

(t) Use of Proceeds; Cash Collateral. The Borrower has at all times used the proceeds of the DIP Loan and all Cash Collateral in accordance with Section 7.02(f).

(u) Budget. A true and complete copy of the Approved Initial Budget is attached as Exhibit D hereto.

(v) Location of Bank Accounts. Schedule 6.01(v) sets forth a complete and accurate list as of the Closing Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Loan Party, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

(w) Intellectual Property. Except as set forth on Schedule 6.01(w) and except with respect to matters of intellectual property infringement, each Loan Party owns or licenses or otherwise has the right to use all material intellectual property licenses, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications and other material intellectual property rights that are reasonably necessary for the operation of its business as currently conducted as of the date hereof, or to the knowledge of such Loan Party, as each Loan Party has planned or committed these businesses to be conducted as of the date hereof. Set forth on Schedule 6.01(w) is a complete and accurate list as of the Closing Date of (i) all material intellectual property licenses to which each Loan Party is a party (other than non-exclusive licenses of intellectual property granted in the ordinary course of business and commercially available licenses for off-the-shelf software); and (ii) all issued patents, applications for issued patents, registered trademarks, applications for registered trademarks, registered service marks, registered trade names, registered copyrights and applications for registered copyrights owned by each Loan Party. To the knowledge of such Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Loan Party, and no other operation of the business now conducted by any Loan Party, infringes upon any intellectual property rights owned by any other Person. No claim or litigation against any Loan Party regarding any of the foregoing is pending or, to the knowledge of such Loan Party, threatened against any Loan Party.

(x) Material Contracts. Set forth on Schedule 6.01(x) is a complete and accurate list as of the Closing Date of all Material Contracts of each Loan Party, showing the parties and subject matter thereof and amendments and modifications thereto. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the knowledge of such Loan Party, all other parties thereto in accordance with its terms, except to the extent that the failure of such Material Contract to be in full force and effect or binding upon and enforceable against the parties thereto could not reasonably be expected to result in a Material Adverse Effect, and except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, (ii) has not been otherwise amended or modified, except for amendments or modifications which could not reasonably be expected to result in a Material Adverse Effect, and (iii) is not in default due to the action of any Loan Party or, to the knowledge of any Loan Party, any other party thereto, except to the extent that any such default is as a result of the commencement of the Chapter 11 Cases.

(y) Investment Company Act. None of the Loan Parties is (i) an “investment company” or “promoter” of, or “principal underwriter” of or for, an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the DIP Obligations unenforceable.

(z) Employee and Labor Matters. Except as set forth on Schedule 6.01(z) hereof, there is (i) no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party which arises out of or under any collective bargaining agreement, in each case that could reasonably be expected to result in a Material Adverse Effect, (ii) no strike, labor dispute, slowdown, stoppage or similar action against any Loan Party, in each case that could reasonably be expected to result in a Material Adverse Effect or (iii) to the knowledge of any Loan Party, no union representation question existing with respect to the employees of any Loan Party and no union organizing activity taking place with respect to any of the employees of any Loan Party, in each case which could reasonably be expected to result in a Material Adverse Effect. No Loan Party has incurred any material liability or obligation under the Worker Adjustment and Retraining Notification Act (“WARN”) or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of any Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(aa) Customers and Suppliers. There exists no actual termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (ii) any Loan Party, on the one hand, and any material supplier thereof, in each case to the extent that such termination, cancellation, limitation, modification or change could not reasonably be expected to result in a Material Adverse Effect.

(bb) Consortium Agreements. Each of the Consortium Agreements, and any rights and obligations thereunder or arising in connection therewith, have been terminated prior to the Closing Date.

(cc) Interrelated Business. The Loan Parties make up a related organization of various entities constituting a single economic and business enterprise so that the Loan Parties share an identity of interests such that any benefit received by any one of them benefits the others. From time to time each Loan Party may render services to or for the benefit of the other Loan Parties, purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other

Loan Parties (including inter alia, the payment by such Loan Party of creditors of the other Loan Parties and guarantees by such Loan Party of indebtedness of the other Loan Parties and provides administrative, marketing, payroll and management services to or for the benefit of the other Loan Parties). The Loan Parties have the same chief executive office, centralized accounting and legal services, certain common officers and directors and generally do not provide consolidating financial statements to creditors.

(dd) Name; Jurisdiction of Organization; Organizational ID Number; Chief Place of Business; Chief Executive Office; FEIN. Schedule 6.01(dd) sets forth a complete and accurate list as of the date hereof of (i) the exact legal name of each Loan Party, (ii) the jurisdiction of organization of each Loan Party, (iii) the organizational identification number of each Loan Party (or indicates that such Loan Party has no organizational identification number), (iv) each place of business of each Loan Party, (v) the chief executive office of each Loan Party and (vi) the federal employer identification number of each Loan Party.

(ee) Locations of Collateral. There is no location at which any Loan Party has any tangible DIP Collateral (except for Inventory in transit) other than (i) those locations listed on Schedule 6.01(ee) and/or Schedule 6.01(o) and (ii) any other locations in the continental United States for which such Loan Party has provided notice to the Collateral Agent in accordance with Section 7.01(l). Schedule 6.01(ee) hereto contains a true, correct and complete list, as of the Closing Date, of the legal names and addresses of each warehouse at which DIP Collateral of each Loan Party is stored. None of the receipts received by any Loan Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns.

(ff) Security Interests.

- (i) Subject to the entry of the Orders and the terms thereof, each DIP Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.
- (ii) The Collateral Agent's DIP Liens (created pursuant to the DIP Loan Documents together with the Orders and held for the benefit of the Secured Parties) are validly created Liens. The Collateral Agent's DIP Liens on the DIP Collateral (created pursuant to the DIP Loan Documents together with the Orders and held for the benefit of the Secured Parties) will be legal, valid, enforceable and perfected Liens, subject to any provisions with respect to priority set out in the Orders. Pursuant to the terms of the Orders, no filing or other action will be necessary to perfect or protect such DIP Liens and security interests on the DIP Collateral. Pursuant to and to the extent provided in the Orders, the DIP Obligations of the Loan Parties under this Agreement will constitute Superpriority

Claims and allowed administrative expense claims in the Chapter 11 Cases under section 364(c) of the Bankruptcy Code, having priority over (other than over (x) the Superpriority Claims of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders and (y) the Carve-Out) all other administrative expense claims and unsecured claims against such Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person (including avoidance actions and the proceeds thereof).

(gg) Existing Credit Card Agreements. Set forth in Schedule 6.01(gg) is a correct and complete list of (i) all of the Existing Credit Card Agreements existing as of the Closing Date between and/or among any Loan Party, any of its Affiliates, the Existing Credit Card Issuers, the Existing Credit Card Processors and any of their affiliates, and (ii) the term of such Existing Credit Card Agreements. Other than with respect to the filing of the Chapter 11 Cases, each Loan Party and, to each Loan Party's knowledge, the other parties thereto, have complied with all of the material terms and conditions of the Existing Credit Card Agreements to the extent necessary for such Loan Party to be entitled to receive all payments thereunder. The Loan Parties have delivered, or caused to be delivered to the DIP Agents and DIP Lenders, true, correct and complete copies of all of the Existing Credit Card Agreements.

(hh) Anti-Terrorism Laws.

(i) General. None of the Loan Parties nor any Subsidiaries of any Loan Parties, is in violation of any Anti-Terrorism Law or 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 Laws.

(ii) None of the Loan Parties, nor any Subsidiaries of any Loan Parties, or their respective agents acting or benefiting in any capacity in connection with the DIP Loan or other transactions hereunder, is any of the following (each, a "Blocked Person"):

(A) a Person that is prohibited pursuant to any of the OFAC Sanctions Programs, including a Person named on OFAC's list of Specially Designated Nationals and Blocked Persons;

(B) a Person that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in (A), above;

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

(D) a Person that is affiliated or associated with a Person described in (A) through (C), above.

(iii) None of the Loan Parties, nor any of their Subsidiaries (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs.

(ii) Prepetition Term Loan A. The Borrower has delivered to the DIP Agents and DIP Lenders complete and correct copies of the Prepetition Term Loan A Loan Documents (including any fee letters relating thereto), including all schedules and exhibits thereto. The Orders, any other orders of the Bankruptcy Court in connection with the Chapter 11 Cases, the Prepetition Term Loan A Loan Documents (including the Prepetition Term Loan A/B Intercreditor Agreement and the Prepetition Term Loan C/D Intercreditor Agreement) and this Agreement set forth the entire agreement and understanding of the parties thereto relating to the Prepetition Term Loan A Obligations, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby.

(jj) Prepetition Term Loan B. The Borrower has delivered to the DIP Agents and DIP Lenders complete and correct copies of the Prepetition Term Loan B Loan Documents (including any fee letters relating thereto), including all schedules and exhibits thereto. The Orders, any other orders of the Bankruptcy Court in connection with the Chapter 11 Cases, and the Prepetition Term Loan B Loan Documents set forth the entire agreement and understanding of the parties thereto relating to the Prepetition Term Loan B Obligations, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby.

(kk) Prepetition Term Loan C. The Borrower has delivered to the DIP Agents and DIP Lenders complete and correct copies of the Prepetition Term Loan C Loan Documents, including all schedules and exhibits thereto. The Orders and the Prepetition Term Loan C Loan Documents set forth the entire agreement and understanding of the parties thereto relating to the Prepetition Term Loan C Obligations, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby.

(ll) Sponsor Subordinated Debt. There is no Sponsor Subordinated Debt outstanding on the Closing Date (other than to the extent constituting any Prepetition Term Loan C Obligations).

(mm) Prepetition Term Loan D. The Borrower has delivered to the DIP Agents and DIP Lenders complete and correct copies of the Prepetition Term Loan D Loan Documents, including all schedules and exhibits thereto. The Orders and the Prepetition Term Loan D Loan Documents set forth the entire agreement and understanding of the parties thereto relating to the Prepetition Term Loan D Obligations, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby.

(nn) Bankruptcy Matters.

- (i) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof under the circumstances, and proper notice of (x) the motion seeking approval of the DIP Loan Documents and entry of the Orders, as applicable and (y) the hearings for the approval of the Interim Order have been held by the Bankruptcy Court.
- (ii) After the entry of the Orders, as applicable, and pursuant to and to the extent permitted in the Orders, as applicable, the DIP Obligations will constitute allowed superpriority administrative expense claims in the Chapter 11 Cases having priority (except as otherwise set forth in the Orders) over all administrative expense claims and unsecured claims against the Borrower and other Loan Parties now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 326, 330, 331, 503(b), 506(c), (upon entry of the Final Order), 507(a), 507(b), 726, or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject, in all respects, to the Adequate Protection Claims and any other superpriority administrative expense claims of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders, and the Carve-Out, in each case, to the extent contemplated by the Orders, as applicable.
- (iii) After the entry of the Orders, as applicable, and pursuant to and to the extent provided in the Orders, as applicable, the DIP Obligations will be secured by a valid and perfected Lien on all of the Loan Parties' pre-Petition Date and post-Petition Date assets, subject, in all respects, to the Carve-Out, to Liens in favor of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders (including the Adequate Protection Liens and the Prepetition Term Loan A Liens) and the Prepetition Permitted Priority Liens, in each case, to the extent contemplated by the Orders.
- (iv) After the entry of each Order, such Order is in full force and effect, is not subject to appeal, leave to appeal or reconsideration process (as applicable) and has not been vacated, reversed, rescinded, stayed, modified or amended in any manner, and no appeal or leave to appeal of such order has been timely filed or, if timely filed, no stay pending such appeal or leave to appeal is currently effective, in each case, without the prior written consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.
- (oo) Perfection Certificate. Except as set forth on the Schedules to this Agreement, there have been no changes to the information set out in the Perfection Certificate dated as of January 28, 2016 and delivered by the Borrower in connection with the Prepetition

Term Loan B Financing Agreement that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect

## ARTICLE VII

### COVENANTS OF THE LOAN PARTIES

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any DIP Loan or any other DIP Obligation (other than unasserted contingent indemnification obligations) shall remain unpaid or any DIP Lender shall have any DIP Loan Commitment hereunder, each Loan Party will, and will cause each other Loan Party to, unless the Required DIP Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each DIP Agent and each DIP Lender and the Prepetition Term Loan A Agent (for distribution to the Prepetition Term Loan A Lenders):

- (i) as soon as available, and in any event within 30 (or, in the case of September of each Fiscal Year of the Parent and its Subsidiaries, 45) days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Closing Date, internally prepared consolidated balance sheets, consolidated statements of operations and retained earnings and consolidated statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the projections delivered pursuant to Section 7.01(a)(vii), all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such fiscal month, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished prior to the Petition Date to the Prepetition Term Loan A Agent and the Prepetition Term Loan B Agent, subject to the absence of footnotes and normal year-end adjustments;
- (ii) [reserved];
- (iii) (X) as soon as available, and in any event within 120 days after the end of each Fiscal Year of the Parent and its Subsidiaries, consolidated balance sheets, consolidated statements of operations and retained earnings and consolidated statements of cash flows of the Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative

form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the projections delivered pursuant to Section 7.01(a)(vii), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Parent and satisfactory to the Required DIP Lenders (it being understood that any of KPMG, Grant Thornton, Crowe Horwath, BDO or PWC is satisfactory to the Required DIP Lenders), which opinion shall be without (1) any qualification or exception as to the scope of such audit or (2) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.02(g) (except for any period within the twelve-month period prior to the Final Maturity Date to the extent such qualification is the result of the DIP Loan (or any portion thereof) being treated as short-term Indebtedness), together with a written statement of such accountants (x) to the effect that, in making the examination necessary for their certification of such financial statements, they have not obtained any knowledge of the existence of an Event of Default or a Default and (y) if such accountants shall have obtained any knowledge of the existence of an Event of Default or such Default, describing the nature thereof, and (Y) immediately, and in any event within 5 Business Days after receipt thereof by any Loan Party or any of its Subsidiaries, copies of all management letters, exception reports or similar letters or reports received by such Loan Party or such Subsidiary in connection with each such audit specified above;

- (iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i) and (iii) of this Section 7.01(a), a certificate in such form as is acceptable to the Required DIP Lenders (a “Compliance Certificate”) signed by an Authorized Officer of the Parent (A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other DIP Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such DIP Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the existence during such period of an Event of Default or Default or, if an Event of Default or Default existed, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto and (B) including a discussion and

analysis of the financial condition and results of operations of the Parent and its Subsidiaries (including such detail and information as the Required DIP Lenders may reasonably request from time to time) for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the financial projections for such period and the figures for the corresponding period in the previous Fiscal Year;

- (v) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clause (i) of this Section 7.01(a), such additional metrics and information, in substantially same form as the monthly “Management Report” that was required by Section 7.01(a)(v) of the Prepetition Term Loan B Financing Agreement;
- (vi) [intentionally omitted];
- (vii) [intentionally omitted];
- (viii) [reserved];
- (ix) promptly after any Loan Party knows that any Governmental Authority is commencing a material non-routine investigation against it, notice of such investigation and, thereafter, prompt reporting of any information relative to such investigation requested by the Required DIP Lenders;
- (x) as soon as possible, and in any event within 5 Business Days of an Authorized Officer’s knowledge of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to result in a Material Adverse Effect, the written statement of an Authorized Officer of the Parent setting forth the details of such Event of Default or Default or other event or development that could reasonably be expected to result in a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;
- (xi) (A) as soon as possible and in any event within 10 days after any Loan Party knows or has reason to know that (1) any Reportable Event with respect to any Employee Plan has occurred that could reasonably be expected to result in any material liability to a Loan Party, (2) any other Termination Event with respect to any Employee Plan has occurred that could reasonably be expected to result in any material liability to a Loan Party, or (3) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to an Employee Plan, a statement of an Authorized Officer of Parent setting forth the details of such occurrence and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto, (B) promptly and in

any event within 10 days after receipt thereof by any Loan Party or promptly after any Loan Party knows or has reason to know of the receipt thereof by any ERISA Affiliate from the PBGC, copies of each notice received by any Loan Party or any ERISA Affiliate thereof of the PBGC's intention to terminate any Employee Plan or to have a trustee appointed to administer any Employee Plan, (C) promptly and in any event within 10 days after the filing thereof with the Internal Revenue Service if requested by any DIP Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Employee Plan with respect to which any Loan Party has the ability to obtain such information, (D) promptly and in any event within 10 days after any Loan Party knows or has reason to know that a required installment within the meaning of Section 412 of the Internal Revenue Code has not been made when due with respect to an Employee Plan, (E) promptly and in any event within 3 days after receipt thereof by any Loan Party or the Loan Party has any knowledge of such receipt by any ERISA Affiliate thereof from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any ERISA Affiliate thereof concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA which could reasonably be expected to result in a Material Adverse Effect or indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (F) promptly and in any event within 10 days after any Loan Party thereof sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party;

- (xii) promptly after the commencement thereof but in any event not later than 5 Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (xiii) as soon as possible and in any event within 5 Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Contract if the notice concerns a materially adverse development to the Loan Parties regarding such Material Contract;
- (xiv) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

- (xv) promptly after the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness or its securities or files with the SEC or any national (domestic or foreign) securities exchange;
- (xvi) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;
- (xvii) promptly upon any DIP Agent's request (acting at the direction of the Required DIP Lenders), the monthly statements received by any Loan Party from any Existing Credit Card Issuers or Existing Credit Card Processors, together with such additional information with respect thereto as shall be reasonably sufficient to enable the DIP Agents to monitor the transactions pursuant to the Existing Credit Card Agreements;
- (xviii) promptly after the date on which a Loan Party commences any proceeding alleging any commercial tort claim alleging damages in excess of \$250,000, a brief description of such commercial tort claim and grant of a security interest therein to the Collateral Agent in accordance with the Security Agreement;
- (xix) promptly upon receipt thereof, copies of any notices of default or other material notices given or received pursuant to the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents and promptly after the sending thereof, copies of all certificates and other reports relating to financial covenants and financial tests under the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents;
- (xx) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party as the DIP Agent or any DIP Lender may from time to time reasonably request;
- (xxi) not later than 1:00 p.m. on the last Business Day of each calendar week, a report (each, a "Variance Report") setting forth the actual cash flows for the immediately preceding Test Period with respect to each line item in the Approved Budget; provided that each Variance Report delivered during the week after a Test Date shall also set forth such cash flows for the Test Period most recently ended, together with the percentage, if any, by which such actual cash flows for each line item exceeded or were less than the cash flows set forth in the Approved Budget for such Test Period; and

(xxii) upon reasonable request by either the Required DIP Lenders or the Prepetition Term Loan A Required Lenders, an update to the Approved Budget then in effect, in form and substance satisfactory to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, for the subsequent 13-week period following such Business Day (it being understood that such update to the Approved Budget then in effect shall contain no differences to the subsequent 12-week period from the Approved Budget then in effect).

(b) [Reserved.]

(c) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, in all material respects with all Requirements of Law (excluding Environmental Laws which are the subject of Section 7.01(j) below), judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing and could reasonably be expected to result in a Material Adverse Effect), such compliance to include, without limitation, subject to any necessary approvals required by the Bankruptcy Court (i) paying before the same become delinquent all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any of its properties (other than taxes, assessments and governmental charges or levies or any other such lawful claims of a Governmental Authority in an aggregate amount at any one time not to exceed \$20,000), and (ii) paying all other lawful claims of a Governmental Authority which if unpaid could reasonably be expected to become a Lien (other than a Permitted Lien) or charge upon any of its properties, except, in each case, to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Except as expressly permitted by Section 7.02(c), maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its good standing in the jurisdiction of its organization, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary except where the failure to maintain and preserve such rights and privileges or to become or remain duly qualified and in good standing in a foreign jurisdiction could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of the Required DIP Lenders at any time and from time to time during normal business hours and upon reasonable notice (subject to the limitations set forth in Section 2.06(b)), to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit

accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, review any environmental site assessments, audits, studies and reports in the possession of any Loan Party or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives; provided that as long as no Event of Default has occurred and is continuing, Borrower shall only be obligated to reimburse for one commercial exam per Fiscal Year. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the representatives and agents of the Required DIP Lenders in accordance with this Section 7.01(f). Borrower and/or any Loan Party shall at all times be given a reasonable opportunity to have an employee, representative or agent accompany the Required DIP Lenders on any such examination, visit, inspection, audit, physical count, valuation, appraisal, review or discussion. Notwithstanding the foregoing, if the Required DIP Lenders elect to exercise their rights hereunder, they shall provide to the Prepetition Term Loan A Agent (for distribution to the Prepetition Term Loan A Lenders) reasonable prior notice to participate in any such discussions and receive any resulting reports.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its tangible properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies real property, so as to prevent any loss or forfeiture thereof or thereunder (in each case, without limiting any Loan Party's right to contest any such lease obligations in accordance with the terms of the applicable lease), except to the extent any such noncompliance has been approved by the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, in each case, such approval not to be unreasonably withheld.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to the Required DIP Lenders (provided that the maintenance by any Loan Party of the insurance required to be maintained by the terms of a Lease to which such Loan Party is a party shall presumptively satisfy such requirement). All policies covering the DIP Collateral are to be made payable to the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders, as its interests may appear, in case of loss, under a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent or the Required DIP Lenders may require to fully protect the Collateral Agent's interest in the DIP Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent, for the benefit of the DIP

Lenders, and such other Persons as the Collateral Agent, acting at the direction of the Required DIP Lenders, may designate from time to time, and shall provide for not less than 30 days' (10 days in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrower's expense and without any responsibility on either DIP Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, the Collateral Agent shall have the sole right (but subject to the rights of landlords under Leases), in the name of the DIP Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations which are necessary or useful in the proper conduct of its business except where the failure to obtain, maintain and preserve could not reasonably be expected to result in a Material Adverse Effect.

(j) Environmental. (i) Keep any property owned by it or any of its Subsidiaries free of any Environmental Liens except for deed restrictions and other institutional controls that are utilized in connection with any mandatory Remedial Actions at such property; (ii) comply, and cause each of its Subsidiaries to comply, in all material respects with Environmental Laws and provide to the Collateral Agent any documentation of such compliance which the Required DIP Lenders may reasonably request, except where failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; (iii) promptly provide the DIP Agents written notice of any Release of a Hazardous Material in excess of any reportable quantity from or onto property owned or operated by it or any of its Subsidiaries and take any Remedial Actions required under Environmental Laws to abate said Release, except for such Releases or Remedial Actions that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and (iv) promptly provide the DIP Agents with written notice within 5 days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of any Loan Party or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries, except for Environmental Actions that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and (C) notice of a violation, citation or other administrative order from a Governmental Authority issued to any Loan Party or any of its Subsidiaries, except for violations, citations, or other administrative orders that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(k) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and

deliver, at its sole cost and expense, such agreements, instruments or other documents as the Required DIP Lenders may require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other DIP Loan Documents, (ii) to subject to valid and perfected Liens any of the DIP Collateral or any other property of any Loan Party and its Subsidiaries (including commercial tort claims, deposit accounts, securities accounts, and commodities accounts, but excluding Excluded Property (as defined in the Security Agreement)), (iii) to establish and maintain the validity and effectiveness of any of the DIP Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, collaterally assign, collaterally transfer and confirm unto each DIP Agent and each DIP Lender the rights now or hereafter intended to be granted to it under this Agreement or any other DIP Loan Document (including, without limitation, upon the occurrence of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, causing each Existing Credit Card Issuer and Existing Credit Card Processor to direct all payments (due to any Loan Party) of all credit card charges submitted by any Loan Party to such Existing Credit Card Issuer and Existing Credit Card Processor to the Existing Blocked Accounts). In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (A) if a Loan Party has failed to comply with its undertakings in this Section after a written request therefor, authorizes each DIP Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (B) authorizes each DIP Agent to file any financing statement required hereunder or under any other DIP Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (C) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof. Notwithstanding any provision set forth in this Agreement or in any DIP Loan Document to the contrary, in no event shall (a) the assets of any CFC constitute security or secure the payment of the DIP Obligations or (b) more than 65% of the voting (and 100% of the non-voting) Equity Interest of any first-tier Subsidiary of a Loan Party that is a CFC be required to be pledged to secure the DIP Obligations.

(l) Change in Collateral; Collateral Records. (i) Give the Collateral Agent not less than 15 days' prior written notice of any change in the location (other than Equipment out for repair or Equipment at employee's homes or otherwise being "used in the field" in the operation of the Borrower's business in the ordinary course of business or in possession of an employee in the ordinary course of business) of any tangible DIP Collateral, other than to (or in-transit between) locations set forth on Schedule 6.01(o) or Schedule 6.01(ee) and any new locations acquired after the Closing Date and added to such Schedule by written notice to the DIP Agents, and with respect to which the Collateral Agent has filed financing statements and otherwise fully perfected its Liens thereon, (ii) advise the Collateral Agent promptly, in sufficient detail, of any Material Adverse Effect relating to the type, quantity or quality of the DIP Collateral or the Lien granted thereon and (iii) execute and deliver, and cause each of its Subsidiaries to execute and deliver, to the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders from time to time, solely for the Collateral Agent's convenience in maintaining a record of DIP Collateral, such written statements and schedules as the Collateral Agent may reasonably require, designating, identifying or describing the DIP Collateral.

(m) [Reserved].

(n) Subordination. Cause all Indebtedness and other obligations now or hereafter owed by it to any of its Affiliates (other than the DIP Obligations), to be subordinated in right of payment and security to the DIP Obligations, the Prepetition Term Loan A Obligations and the Prepetition Term Loan B Obligations pursuant to a subordination agreement in form and substance reasonably satisfactory to the Required DIP Lenders, the Prepetition Term Loan A Required Lenders and the Prepetition Term Loan B Lenders, if requested.

(o) Post-Closing. To the extent not executed and delivered on the Closing Date, unless otherwise agreed by the Required DIP Lenders in their reasonable discretion, each Loan Party shall execute, deliver to the applicable DIP Agent, and/or perform, as applicable, each item listed on Schedule 7.01(o)<sup>3</sup> within the time frame set forth therein (or such later date as may be permitted by the Required DIP Lenders in their sole discretion).

(p) Fiscal Year. Cause the Fiscal Year of the Parent and its Subsidiaries to end on September 30 of each calendar year unless the Required DIP Lenders consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(q) Lender Meetings. Upon the reasonable request of the Required DIP Lenders, participate in a meeting with the DIP Lenders at the Borrower' corporate offices (or at such other location as may be agreed to by the Borrower and the Required DIP Lenders (including via telephonic conference call)) at such time as may be agreed to by the Borrower and the Required DIP Lenders; provided, that, if the Required DIP Lenders exercise their rights hereunder, they shall (except in the case of any informal telephonic meetings and conference calls) provide to the Prepetition Term Loan A Agent reasonable prior notice to allow the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders to participate in any such meetings.

(r) Cash Management Order. Keep the Cash Management Order in effect at all times on and after the Closing Date.

(s) Milestones. The Borrower shall comply with milestones set forth in Schedule 7.01(s).

Section 7.02 Negative Covenants. So long as any principal of or interest on any DIP Loan or any other DIP Obligation (other than unasserted contingent indemnification Obligations) shall remain unpaid or any DIP Lender shall have any DIP Loan Commitment hereunder, each Loan Party shall not and shall not permit any of its Subsidiaries to:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof); sell any of its property or assets subject to an understanding or agreement,

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<sup>3</sup> Post-Closing Covenant Schedule to be included.

contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable) with recourse to it or any of its Subsidiaries or assign or otherwise transfer, or permit any of its Subsidiaries to assign or otherwise transfer, any account or other right to receive income; other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions. Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or convey, sell, lease or sublease, transfer or otherwise dispose of, whether in one transaction or a series of related transactions, all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or purchase or otherwise acquire, whether in one transaction or a series of related transactions, all or substantially all of the assets of any Person (or any division thereof) (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that

- (i) any Loan Party (other than Garden Fresh, Holdings or Parent) may be merged into, or consolidated with, another Loan Party (other than Garden Fresh and Parent), so long as (A) no other provision of this Agreement would be violated thereby, (B) such Loan Party gives the DIP Agents at least 15 days' prior written notice of such merger or consolidation, (C) no Default or Event of Default shall have occurred and be continuing either before or immediately after giving effect to such transaction and, (D) the Collateral Agent's rights in any DIP Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger or consolidation;
- (ii) any Loan Party and its Subsidiaries may make Permitted Dispositions and Permitted Investments; and
- (iii) in order to resolve disputes that occur in the ordinary course of business consistent with past practice, Parent and its Subsidiaries may discount or otherwise compromise for less than face value thereof, notes or accounts receivable.

(iv) [Reserved.]

(d) Change in Nature of Business; Change in Independent Certified Public

Accountant.

- (i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l), or acquire any material properties or assets that are not reasonably related to the conduct of such business activities.

(ii) Permit the Parent or Holdings to have any material liabilities (other than liabilities arising or permitted under the DIP Loan Documents, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents), own any material assets (other than the Equity Interests of its Subsidiaries, dividends and distributions permitted to be made on such Equity Interests and other de minimis assets) or engage in any operations or business (other than the ownership of its Subsidiaries and actions required for compliance with the DIP Loan Documents and except as expressly permitted by the DIP Loan Documents).

(e) Loans, Advances, Investments, Etc. Make or commit, or agree to make or permit any of its Subsidiaries to make or commit or agree to make, any Investment in any other Person, except for Permitted Investments.

(f) Use of Proceeds, Cash Collateral. Except as otherwise provided herein or approved by the Administrative Agent (at the direction of the Required DIP Lenders), use any cash (including Cash Collateral) or the proceeds of any DIP Loans in a manner or for a purpose inconsistent with this Agreement, the Orders and the Approved Budget (subject to the Permitted Variances); provided, that no cash (including Cash Collateral) or the proceeds of any DIP Loans may be used by the Loan Parties in connection with: (i) (x) with respect to cash (including Cash Collateral), the payment of any principal of the Prepetition Term Loan B Obligations, the Prepetition Term Loan C Obligations and Prepetition Term Loan D Obligations, and (y) with respect to proceeds of the DIP Loans (but not any other cash or Cash Collateral), the payment of any principal of the Prepetition Term Loan A Obligations and (ii) investigating (including by way of examination and/or discovery proceedings), initiating, asserting, joining, commencing, supporting or prosecuting any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders, the DIP Agents, the Prepetition Term Loan A Agent, the Prepetition Term Loan A Lenders, the Prepetition Term Loan B Agent, the Prepetition Term Loan B Lenders, the Prepetition Term Loan C Agent, the Prepetition Term Loan C Lenders, the Prepetition Term Loan D Agent, the Prepetition Term Loan D Lenders and each of their respective affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees; past, present and future, and their respective heirs, predecessors, successors and assigns, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (1) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (2) any so-called "lender liability" claims and causes of action; (3) any action with respect to the validity, enforceability, priority and extent of the Superpriority Claims, Adequate Protection Liens or other Adequate Protection Provisions, Prepetition Term Loan A Obligations, the Prepetition Term Loan B Obligations, the Prepetition Term Loan C Obligations and Prepetition Term Loan D Obligations or the DIP Loans; (4) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Superpriority Claims, the Adequate Protection Liens or other Adequate Protection Provisions, the Prepetition Term Loan A Obligations, the Prepetition Term Loan B Obligations, the Prepetition Term Loan C Obligations

and Prepetition Term Loan D Obligations, the DIP Obligations or the DIP Loans; or (5) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Secured Parties hereunder or under the DIP Loan Documents, the Orders, the Prepetition Term Loan A Loan Documents or the Prepetition Term Loan B Loan Documents, or for any purpose that is prohibited under the Bankruptcy Code, in each case, other than an aggregate amount not to exceed \$50,000 that may be used by, or to reimburse, the fees, costs or expenses of, the Committee solely in connection with the investigation of the prepetition claims of the holders of Prepetition Term Loan A Obligations and the Prepetition Term Loan B Obligations or their affiliates; provided, that, during the Remedies Notice Period, nothing herein or in the Orders, as applicable, shall limit the ability of the Loan Parties to seek to challenge an Event of Default.

(g) Capital Expenditures. Other than as expressly set forth in the Approved Budget, make or commit or agree to make, or permit any of its Subsidiaries to make or commit or agree to make, any Capital Expenditure (by purchase or Capitalized Lease).

(h) Restricted Payments. (i) Declare or pay any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (ii) make any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (iii) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (iv) return any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (v) pay any management fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting or other services agreement (including the Management Agreement) to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party, Ultimate Parent, Sun or another Permitted Holder; provided, however, that:

- (A) [Reserved.]
- (B) any Subsidiary of the Borrower may make dividends or distributions to the Borrower;
- (C) [Reserved.]
- (D) [Reserved.]
- (E) [Reserved.]
- (F) reasonable and customary indemnities to directors, officers and employees of Parent or any direct or indirect parent of Parent in the

ordinary course of business, to the extent reasonably attributable to the ownership or operations of Parent and its Subsidiaries; and

- (G) the Loan Parties may make dividends and distributions to Parent, to enable Parent to pay third parties in an aggregate amount not to exceed \$25,000 for the period from the Closing Date through the Maturity Date.

- (i) Federal Reserve Regulations. Permit any DIP Loan or the proceeds of any DIP Loan under this Agreement to be used for any purpose that would cause such DIP Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

- (j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) in the ordinary course of business consistent with past practice, for fair consideration and on terms and conditions at least as favorable as would be obtained by such Loan Party at that time in a comparable arm's length transaction with a Person that is not an Affiliate thereof, (ii) transactions with another Loan Party, (iii) transactions permitted by Section 7.02(e) and Section 7.02(h), (iv) [reserved] and (v) the DIP Obligations and transactions pursuant to the DIP Loan Documents.

- (k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

- (A) this Agreement and the other DIP Loan Documents, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents;
          - (B) [Reserved.]
          - (C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

- (D) in the case of clause (iv) any agreement setting forth customary restrictions on the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract of similar property or assets; or
- (E) in the case of clause (iv) any agreement, instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto.

(l) Limitation on Issuance of Equity Interests. Issue or sell or enter into any agreement or arrangement for the issuance and sale of, or permit any of its Subsidiaries to issue or sell or enter into any agreement or arrangement for the issuance and sale of, any shares of its Equity Interests, any securities convertible into or exchangeable for its Equity Interests or any warrants.

(m) Modifications of Indebtedness, Junior Obligations, Organizational Documents and Certain Other Agreements; Prepayments of Indebtedness; Etc.

- (i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness in excess of \$1,000,000, or of any instrument or agreement (including the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents, the Sponsor Subordinated Debt Documents, any purchase agreement, indenture, loan agreement or security agreement) relating to (A) any such Indebtedness (other than Indebtedness arising under the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents) if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would change the subordination provision, if any, of such Indebtedness, or would otherwise be adverse to the DIP Lenders, the Prepetition Term Loan A Lenders or the issuer of such Indebtedness in any respect, provided, however, that any such Indebtedness may be refinanced if the replacement Indebtedness would otherwise constitute Permitted Indebtedness or (B) any Indebtedness arising under the terms of the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents.
- (ii) Do any of the following:

- (A) make any voluntary or optional payment, prepayment, redemption, defeasance, sinking fund payment or other acquisition for value (including, without limitation, by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Indebtedness when due) of any of its or its Subsidiaries' Indebtedness (including the Prepetition Term Loan B, Prepetition Term Loan C, the Prepetition Term Loan D and the Sponsor Subordinated Debt), excluding the Prepetition Term Loan A Obligations as permitted under this Agreement and the Orders, or refund, refinance, replace or exchange any other Indebtedness for any such Indebtedness (other than the DIP Obligations and the Prepetition Term Loan A Obligations as permitted under this Agreement and the Orders),
  - (B) make any payment (whether in respect of principal, interest, fees, expenses or otherwise), prepayment, redemption, defeasance, sinking fund payment or repurchase of any Junior Obligations or any Subordinated Indebtedness (including, but not limited to, the Sponsor Subordinated Debt),
  - (C) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness as a result of any asset sale, change of control, issuance and sale of debt or equity securities or similar event other than in respect of the Prepetition Term Loan A Obligations and the DIP Obligations, as expressly permitted under this Agreement and the Orders,
  - (D) make any payment (whether in respect of principal, interest, fees, expenses or otherwise) in respect of the Prepetition Term Loan B Obligations (provided that interest paid in-kind may be so paid), Prepetition Term Loan C Obligations or the Prepetition Term Loan D Obligations,
  - (E) pay any fees or expenses related to the transactions contemplated to be consummated on the Closing Date under this Agreement other than fees or expenses (x) expressly reserved in the Funds Flow Direction and paid on the Closing Date or (y) fees and expenses of the DIP Agents and DIP Lenders payable under the DIP Loan Documents or payment of fees and expenses of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders that are paid after the Closing Date in accordance with the Approved Budget;
- (iii) amend, modify or otherwise change its name, jurisdiction of organization, organizational identification number or FEIN, except that a Loan Party may (A) change its name, jurisdiction of organization, organizational

identification number or FEIN in connection with a transaction permitted by Section 7.02(c) and (B) change its name upon at least 30 days' prior written notice by the Borrower to the DIP Agents of such change and so long as, at the time of such written notification, such Person provides any financing statements or fixture filings necessary to perfect and continue perfected the Collateral Agent's Liens;

- (iv) amend, modify or otherwise change its Governing Documents, including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it, with respect to any of its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests;
- (v) amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of the Management Agreement; or
- (vi) [Reserved].

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA. Except where any failure to comply could not reasonably be expected to result in a Material Adverse Effect, (i) engage, or, to the extent such Loan Party has the ability to control an ERISA Affiliate, permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA; (ii) engage, or, to the extent such Loan Party has the ability to control an ERISA Affiliate, permit any ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor; (iii) adopt or, to the extent such Loan Party has the ability to control an ERISA Affiliate, permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law; (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment.

(p) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition

upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement, the other DIP Loan Documents, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents, (ii) restrictions or conditions imposed by any agreement relating to Permitted Liens or secured Indebtedness permitted by Section 7.02(b) of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and the proceeds thereof, (iii) [reserved], (iv) customary provisions in leases restricting the assignment or sublet thereof, (v) customary provisions restricting assignment of any licensing agreement or other contract entered into by the Loan Parties or any of their Subsidiaries in the ordinary course of business consistent with past practices, and (vi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business.

(q) Anti-Terrorism Laws.

- (i) Conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person,
- (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the OFAC Sanctions Programs or
- (iii) 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 the OFAC Sanctions Programs, the USA PATRIOT Act or any other Anti-Terrorism Law.
- (iv) The Borrower shall deliver to the DIP Lenders any certification or other evidence reasonably requested from time to time by any DIP Lender in its sole discretion, confirming the Borrower' compliance with this Section 7.02(q).

(r) Take any action, or permit Parent or any shareholder, member or owner of Borrower to take any action, that would have the effect of changing the classification of Borrower for federal, state, local and foreign tax purposes from its tax classification as of the Closing Date.

(s) Chapter 11 Cases.

- (i) Other than any Adequate Protection Claims, any Adequate Protection Liens and any Superpriority Claims, in each case to the extent set forth in the Orders, as applicable, and except for the Carve-Out, incur, create, assume, suffer to exist or permit, or file any motion seeking, any other superpriority claim which is pari passu with, or senior to the claims and

Liens of, the DIP Agents, DIP Lenders, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders.

- (ii) Make or permit to be made any change to the Orders, as applicable, without the consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders.
- (iii) Commence any adversary proceeding, contested matter or other action asserting any claims or defenses or otherwise against DIP Agent, any DIP Lender, the Prepetition Term Loan A Agent, any Prepetition Term Loan A Lender, the Prepetition Term Loan B Agent or any Prepetition Term Loan B Lender with respect to this Agreement, the other DIP Loan Documents, the transactions contemplated hereby or thereby, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the other documents or agreements executed or delivered in connection therewith or the transactions contemplated thereby; provided, that during the Remedies Notice Period, nothing herein or in the Orders, as applicable, shall limit the ability of the Loan Parties to seek to challenge an Event of Default.
- (iv) Make (i) any prepetition “critical vendor” payments or other payments on account of any creditor’s prepetition unsecured claim, (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 amounts and on terms and conditions that (a) are approved by order of the Bankruptcy Court after notice and a hearing and (b) are expressly permitted by the terms of the DIP Loan Documents and within the limits, including any allowed variance, of the Approved Budget or otherwise with the consent of the Required DIP Lenders.
- (v) File any motion or application with the Bankruptcy Court with regard to actions taken outside the ordinary course of business of the Loan Parties without consulting with the DIP Lenders and the Prepetition Term Loan A Lenders and providing the DIP Lenders and the Prepetition Term Loan A Lenders prior (in any case, not less than two (2) Business Days’ (or such lesser time as may be reasonably acceptable to Required DIP Lenders and the Prepetition Term Loan A Required Lenders)) notice and the opportunity to review and comment on each such motion.

(t) Total Expenditures; Total Receipts. With respect to the Test Period ending on each Test Date, the Loan Parties shall not, and shall cause each other Loan Party to not, without the consent of the Required DIP Lenders, (i) make disbursements that would be included in any disbursement line-item (a “Disbursements Line”) in the Approved Budget during such Test Period in an aggregate amount which would exceed by more than fifteen percent (15.0%) the aggregate amount of disbursements budgeted in such Disbursements Line in the

Approved Budget for such Test Period (the “Operating Disbursement Variance”) and (ii) permit receipts that would be included in the aggregate “Total Receipts” line-item in the Approved Budget (a “Receipts Line”) during such Test Period to be in an aggregate amount less than eighty-five percent (85.0%) of receipts budgeted in such Receipts Line in the Approved Budget for such Test Period (the “Receipts Variance” and together with the Operating Disbursement Variance, the “Permitted Variances”).

(u) Minimum Liquidity. On any Test Date, permit the Minimum Liquidity to be less than \$100,000.

## ARTICLE VIII

### MANAGEMENT, COLLECTION AND STATUS OF ACCOUNTS RECEIVABLE AND OTHER COLLATERAL

Section 8.01 Collection of Accounts Receivable; Management of Collateral. Subject to the senior Liens and enforcement rights and the other rights and remedies of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders set forth in the Orders and the Prepetition Term Loan A/B Intercreditor Agreement, as applicable:

(a) Each Loan Party shall maintain the Existing Blocked Accounts with respect to such Loan Party’s deposit accounts with the financial institutions set forth on Schedule 8.01 hereto. No Loan Party shall be permitted to open any other deposit accounts after the Closing Date, other than with the prior consent of the Prepetition Term Loan A Required Lenders and the Required DIP Lenders. All checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness received directly by any Loan Party from any Account Debtor, as proceeds from their Accounts Receivable, or as proceeds of any other DIP Collateral, shall be held by such Loan Party in trust for the DIP Agents, the Prepetition Term Loan A Agent, the DIP Lenders and the Prepetition Term Loan A Lenders, and, upon receipt be deposited by such Loan Party in original form and no later than the next Business Day after receipt thereof into an Existing Blocked Account. Each Loan Party shall not commingle such collections with their own funds or with the proceeds of any assets not included in the DIP Collateral. All funds received in the Existing Blocked Accounts (i) after the occurrence and during the continuance of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, upon request by the Collateral Agent (acting at the direction of the Required DIP Lenders), shall be sent by wire transfer or Automated Clearing House, Inc. payment to the Payment Office to be credited to the Administrative Agent’s Account for application at the end of each Business Day when such funds are received in Administrative Agent’s Account to reduce the then principal balance of the DIP Loan in accordance with the terms hereof, conditional upon final payment to the Administrative Agent, and (ii) at all other times, may be transferred to an operating account of such Loan Party subject to an Existing Control Agreement. No checks, drafts or other instruments received by the Administrative Agent shall constitute final payment to the Administrative Agent unless and until such checks, drafts or instruments have actually been collected.

(b) So long as no Event of Default has occurred and is continuing, the Loan Parties may enforce, collect and receive all amounts owing on the Accounts Receivable. After the occurrence and during the continuance of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, the Collateral Agent may send a notice of assignment and/or notice of the Collateral Agent's security interest to any and all Account Debtors or third parties holding or otherwise concerned with any of the DIP Collateral and, thereafter, the Collateral Agent shall have the sole right to collect the Accounts Receivable and payment intangibles of the Loan Parties and/or may take possession of the DIP Collateral and the books and records relating thereto. After the occurrence and during the continuation of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, the Loan Parties shall not, without prior written consent of the Collateral Agent, grant any extension of time of payment of any Account Receivable or payment intangible, compromise or settle any Account Receivable or payment intangible for less than the full amount thereof, release, in whole or in part, any Person or property liable for the payment thereof, or allow any credit or discount whatsoever thereon.

(c) Each Loan Party hereby appoints each DIP Agent or its designee on behalf of such DIP Agent as such Loan Party's attorney-in-fact with power, exercisable during the continuance of an Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, to (i) endorse such Loan Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Accounts Receivable or payment intangibles of such Loan Party, (ii) sign such Loan Party's name on any invoice or bill of lading relating to any of the Accounts Receivable or payment intangibles of such Loan Party, drafts against Account Debtors with respect to Accounts Receivable or payment intangibles of such Loan Party, assignments and verifications of Accounts Receivable or payment intangibles and notices to Account Debtors with respect to Accounts Receivable or payment intangibles of such Loan Party (provided however, that if no Event of Default is continuing, it shall only conduct verifications and send notices, as applicable, in the name of the applicable Loan Party), (iii) send verification of Accounts Receivable of such Loan Party, and (iv) notify the Postal Service authorities to change the address for delivery of mail addressed to such Loan Party to such address as such DIP Agent may designate and to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission (other than acts of omission or commission constituting gross negligence, bad faith, or willful misconduct as determined by a final judgment of a court of competent jurisdiction), or for any error of judgment or mistake of fact or law; this power being coupled with an interest is irrevocable until the DIP Loan and all other DIP Obligations under the DIP Loan Documents are paid in full and all of the DIP Loan Commitments are terminated.

(d) Nothing herein contained shall be construed to constitute any DIP Agent as agent of any Loan Party for any purpose whatsoever, and the DIP Agents shall not be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the DIP Collateral wherever the same may be located and regardless of the cause thereof (other than from acts of omission or commission constituting gross negligence, bad faith or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The DIP Agents shall not, under any circumstance or in any event whatsoever, have any liability for any

error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Accounts Receivable of any Loan Party or any instrument received in payment thereof or for any damage resulting therefrom (other than acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The DIP Agents, by anything herein or in any assignment or otherwise, do not assume any of the obligations under any contract or agreement assigned to any DIP Agent and shall not be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

(e) Notwithstanding any other terms set forth in the DIP Loan Documents, the rights and remedies of the DIP Agents and the DIP Lenders herein provided, and the obligations of the Loan Parties set forth herein, are cumulative of, may be exercised singly or concurrently with, and are not exclusive of, any other rights, remedies or obligations set forth in any other DIP Loan Document or as provided by law.

Section 8.02 [Reserved.]

Section 8.03 Collateral Custodian. Upon the occurrence and during the continuance of any Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, the Collateral Agent may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent who shall have full authority to do all acts necessary to protect the DIP Agents' and the DIP Lenders' interests. Upon the occurrence and during the continuance of any Event of Default and only after the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent may reasonably request to preserve the DIP Collateral. All costs and expenses incurred by the Collateral Agent by reason of the employment of the custodian shall be the responsibility of the Borrower and charged to the Loan Account.

## ARTICLE IX

### EVENTS OF DEFAULT

Section 9.01 Events of Default. If any one or more of the following events (each, an "Event of Default") shall occur and be continuing:

(a) Borrower shall fail to pay (i) any principal of any DIP Loan when due (whether by scheduled maturity, required repayment, acceleration or otherwise), (ii) any interest on any DIP Loan when due or (iii) within two (2) days after the due date, any Collateral Agent Advance or any fee, indemnity or other amount payable under this Agreement or any other DIP Loan Document when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(b) any representation, warranty or certification made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any DIP Loan Document or under or in connection with any report, certificate or other document

delivered to any DIP Agent or any DIP Lender pursuant to any DIP Loan Document shall have been incorrect in any material respect when made or deemed made;

(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in (i) clauses (c), (d), (f), (n), (o), (p), (r) or (s) of Section 7.01, Section 7.02, or Article VIII, (ii) Section 7.01(a) and such failure, if capable of being remedied, shall remain unremedied for five (5) days or (iii) clauses (e), (g), (h), (i), (k) or (l) of Section 7.01 and (in circumstances described in this clause (iii)) such failure, if capable of being remedied, shall remain unremedied for five (5) Business Days, after the earlier of (x) the date a senior officer of any Loan Party shall have become aware of such failure and (y) the date written notice of such default shall have been given by any DIP Agent or DIP Lender to such Loan Party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any DIP Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of (x) the date a senior officer of any Loan Party becomes aware of such failure and (y) the date written notice of such default shall have been given by any DIP Agent to such Loan Party;

(e) any Loan Party shall fail to pay any principal of or interest or premium on any of its unstayed or post-Petition Date Indebtedness when due (excluding Indebtedness evidenced by this Agreement, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents and the Sponsor Subordinated Debt Documents) to the extent that the aggregate principal amount of all such Indebtedness exceeds \$1,000,000, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) [Reserved]

(g) [Reserved]

(h) any provision of any DIP Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any DIP Loan Document;

(i) any Security Agreement, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected Lien in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders on any DIP Collateral purported to be covered thereby;

(j) the DIP Obligations shall cease to be Superpriority Claims;

(k) one or more judgments, awards, or orders (or any settlement of any claim that, if breached, could result in a judgment, order, or award) for the payment of money exceeding \$500,000 in the aggregate (the "Maximum Judgment Amount") shall be rendered against Parent or any of its Subsidiaries and remain unsatisfied, or the Parent or any of its Subsidiaries shall agree to the settlement of any one or more pending or threatened claims, actions, suits, or proceedings affecting any Loan Party before any court or other Governmental Authority or any arbitrator or mediator, providing for the payment of money exceeding \$500,000 in the aggregate, and in the case of any such judgment or order either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement, or (ii) there shall be a period of 10 consecutive days after entry thereof during which a stay of enforcement of any such judgment, order, award or settlement, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection if and for so long as (A) the amount of such judgment, order, award or settlement in excess of the Maximum Judgment Amount is covered by a valid and binding policy of insurance between the applicable Loan Party and the insurer covering full payment thereof (other than any deductible) or an amount sufficient to lower the exposure below the Maximum Judgment Amount, and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;

(l) any Loan Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of the business of the Loan Parties, taken as a whole, for more than 15 days;

(m) any damage to, or loss, theft or destruction of, any portion of the DIP Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party;

(n) any cessation of a substantial part of the business of a Loan Party;

(o) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party;

(p) the indictment of Parent or any of its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought include forfeiture to any Governmental Authority of any material portion of the property of such Person;

(q) any Loan Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, any Loan Party incurs a withdrawal liability in an annual amount exceeding \$500,000 or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof any Loan Party's annual contribution requirements with respect to such Multiemployer Plan increases in an annual amount exceeding \$500,000;

(r) any Termination Event with respect to any Employee Plan shall have occurred, and, 30 days after notice thereof shall have been given to any Loan Party by any DIP Agent, (i) such Termination Event (if correctable) shall not have been corrected, (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan by more than \$500,000 and (iii) such Termination Event could reasonably be expected to result in a liability to any Loan Party in excess of \$500,000 (or, in the case of a Termination Event involving liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, could reasonably be expected to result in a liability to any Loan Party in excess of \$500,000);

(s) [Reserved];

(t) any material provision (including any of the subordination provisions) of the Prepetition Term Loan A/B Intercreditor Agreement or the Prepetition Term Loan C/D Intercreditor Agreement or of any other intercreditor or subordination agreement shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any of the parties thereto, other than as provided in the Orders;

(u) any material provision (including any of the subordination provisions) of any subordination agreement in favor of the Prepetition Term Loan A Agent, the Prepetition Term Loan A Lenders, the Prepetition Term Loan B Agent and the Prepetition Term Loan B Lenders, shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the Sponsor Subordinated Debt, the holder(s) of the obligations subject to such other subordination agreement or the agent(s) for such holder(s);

(v) a Change of Control shall have occurred;

(w) any Existing Credit Card Issuer or Existing Credit Card Processor withholds payment of amounts otherwise payable to any Loan Party to fund a reserve account or otherwise hold as collateral, or shall require any Loan Party to pay funds into a reserve account or for such Existing Credit Card Issuer or Existing Credit Card Processor to otherwise hold as collateral, or any Loan Party shall provide a letter of credit, guarantee, indemnity or similar instrument to or in favor of such Existing Credit Card Issuer or Existing Credit Card Processor such that in the aggregate all of such funds in the reserve account, other amounts held as collateral and the amount of such letters of credit, guarantees, indemnities or similar instruments shall exceed \$500,000; or

(x) There shall have occurred any of the following in the Chapter 11 Cases:

- (i) the bringing of a motion by any Loan Party in the Chapter 11 Cases or the entry of any order by the Bankruptcy Court in the Chapter 11 Cases: (i) to obtain additional financing under section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement or that does not provide for the repayment of all DIP Obligations under this Agreement in full in cash; (ii) to grant any Lien other than Liens expressly permitted under this Agreement and the Orders upon or affecting any DIP Collateral; (iii) except as provided in this Agreement or the Orders, as the case may be, to use Cash Collateral of the DIP Agents, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders under section 363(c) of the Bankruptcy Code without the prior written consent of the DIP Agents, the Required DIP Lenders, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders; or (iv) that (in the case of any Loan Party) requests or seeks authority for or that (in the case of an order entered by the Bankruptcy Court on account of a request by any Loan Party) approves or provides authority to take any other action or actions adverse to the rights and remedies of the DIP Agents, the Prepetition Term Loan A Agent, the DIP Lenders and the Prepetition Term Loan A Lenders under this Agreement, the Orders or the Prepetition Term Loan A Loan Documents, or their interest in the DIP Collateral;
- (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 which does not provide for either (x) the repayment of all DIP Obligations under this Agreement in full in cash and the repayment of all of the Prepetition Term Loan A Obligations in full in cash on the effective date of such plan or (y) such other treatment of the DIP Obligations and the Prepetition Term Loan A Obligations in a manner acceptable to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, respectively, or the termination of any Loan Party's exclusive right to file and solicit acceptances of a plan of reorganization;
- (iii) the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not (i)(a) contain a provision for repayment in full in cash of all of the DIP Obligations under this Agreement and all of the Prepetition Term Loan A Obligations on or before the effective date of such plan or plans and (b) provide for the continuation of the Liens and security interests granted to the Collateral Agent for the benefit of the DIP Lenders and to the Prepetition Term Loan A Agent for the benefit of the Prepetition Term Loan A Lenders and the priority thereof as set forth in the Orders until the DIP Obligations and the Prepetition Term Loan A Obligations have been paid in full or (ii) provide for such other treatment of the DIP Obligations and the Prepetition Term Loan A Obligations in a manner acceptable to the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, respectively;

- (iv) the entry of an order in the Chapter 11 Cases amending, supplementing, staying, vacating or otherwise modifying any DIP Loan Document or any Order, in any case, without the prior written consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders;
- (v) the Final Order is not entered within twenty-eight (28) days (or such other period as the Required DIP Lenders and the Prepetition Term Loan A Required Lenders may agree to in writing) following the date of the Interim Hearing;
- (vi) the payment of, or application by any Loan Party for authority to pay, any prepetition claim without the Required DIP Lenders' prior written consent other than (i) as provided in any "first day order" in form and substance reasonably acceptable to the Required DIP Lenders, (ii) as set forth in the Approved Budget (subject to the Permitted Variances) or (iii) unless otherwise expressly permitted under this Agreement;
- (vii) the entry of an order by the Bankruptcy Court appointing, or the filing of an application by any Loan Party, for an order seeking the appointment of, in either case without the consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders, an interim or permanent trustee in the Chapter 11 Cases or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in the Chapter 11 Cases with expanded powers (beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Borrower or with the power to conduct an investigation of (or compel discovery from) the DIP Agents or the DIP Lenders under the DIP Loan Documents, or against the Prepetition Term Loan A Agent or the Prepetition Term Loan A Lenders under the Prepetition Term Loan A Loan Documents, or against the Prepetition Term Loan B Agent or the Prepetition Term Loan B Lenders under the Prepetition Term Loan B Loan Documents; or the sale (other than as contemplated by the Restructuring Support Agreement), without the consent of the DIP Agents, the Required DIP Lenders, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders, of all or substantially all of the Borrower's or any other Loan Party's assets either through a sale under section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases or the CCAA Recognition Proceedings, or otherwise that does not provide for payment in full in cash of the DIP Obligations and the Prepetition Term Loan A Obligations;
- (viii) the dismissal of the Chapter 11 Cases which does not contain a provision for payment in full in cash of all noncontingent monetary DIP Obligations of the Borrower hereunder, or if any Loan Party shall file a motion or other pleading seeking the dismissal of the Chapter 11 Cases which does

not contain a provision for payment in full in cash of all noncontingent monetary DIP Obligations of the Borrower hereunder;

- (ix) the conversion of the Chapter 11 Cases from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or a bankruptcy under Debtor Relief Laws, as applicable, or any Loan Party shall file a motion or other pleading seeking the conversion of the Chapter 11 Cases under section 1112 of the Bankruptcy Code 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 (x) to allow any creditor to execute upon or enforce a Lien on any DIP Collateral, or (y) with respect to any Lien of or the granting of any Lien on any DIP Collateral to any state or local environmental or regulatory agency or authority having priority over the Liens in favor of the DIP Agents and the Prepetition Term Loan A Agent;
- (xi) the entry of an order in the Chapter 11 Cases avoiding or requiring repayment of any portion of the payments made on account of the DIP Obligations owing under this Agreement or the other DIP Loan Documents and any portion of the payments made on account of the Prepetition Term Loan A Obligations;
- (xii) the failure of any Loan Party to perform any of its obligations under the Orders or any violation of any of the terms of any Order, subject to any applicable grace or cure periods;
- (xiii) the challenge by any Loan Party to the validity, extent, perfection or priority of any Liens (including Adequate Protection Liens) and Superpriority Claims granted under the Orders, the DIP Loan Documents, the Prepetition Term Loan A Loan Documents or the Prepetition Term Loan B Loan Documents, as applicable;
- (xiv) the remittance, use or application of Cash Collateral of the Loan Parties other than in accordance with any cash management procedures and agreements approved by the Bankruptcy Court and the Orders;
- (xv) the entry of an order in any of the Chapter 11 Cases granting any other super priority administrative claim or Lien equal or superior to that granted to the Prepetition Term Loan A Agent on behalf of the Prepetition Term Loan A Lenders and the applicable DIP Agent, on behalf of itself and the DIP Lenders without, in each case, the consent in writing of the Prepetition Term Loan A Required Lenders and the Required DIP Lenders or as otherwise expressly permitted in this Agreement;
- (xvi) the filing of a motion by any Loan Party requesting, or the entry of any order granting, any super-priority claim which is senior or pari passu with

(A) the claims of the DIP Agents and/or the DIP Lenders under the DIP Loan Documents, (B) the claims of the Prepetition Term Loan A Agent and/or the Prepetition Term Loan A Lenders under the Prepetition Term Loan A Loan Documents, or (C) the claims of the Prepetition Term Loan B Agent and/or the Prepetition Term Loan B Lenders under the Prepetition Term Loan B Loan Documents, in each case, except to the extent provided in the Orders (i) in connection with Prepetition Permitted Priority Liens, (ii) in respect of the Carve-Out, (iii) under the Adequate Protection Provisions or (iv) to the extent the claim relates to new financing that provides for the repayment of all DIP Obligations under this Agreement irrevocably in full in cash on the closing of such new financing.

- (xvii) the entry of an order precluding the Collateral Agent or the Prepetition Term Loan A Agent from having the right to or being permitted to "credit bid" with respect to the assets of the Loan Parties;
- (xviii) any attempt by any Loan Party to reduce (other than a reduction in accordance with the terms of this Agreement), avoid, set off or subordinate the DIP Obligations or the Liens securing such DIP Obligations to any other debt;
- (xix) the reversal, vacation or stay of the effectiveness of any Order or any provision thereof without the consent of the Required DIP Lenders and the Prepetition Term Loan A Required Lenders;
- (xx) the payment of, or granting adequate protection (except pursuant to the Adequate Protection Provisions) with respect to, any Prepetition Term Loan A Obligations (provided, that, the Prepetition Term Loan A Lenders may request additional adequate protection in the form of replacement liens), any Prepetition Term Loan B Obligations, any Prepetition Term Loan C Obligations or any Prepetition Term Loan D Obligations (other than with respect to payment permitted under any "first day order" in form and substance satisfactory to the DIP Lenders or as set forth in any Order);
- (xxi) an application for any of the orders described in this Section 9 shall be made by a Person other than the Collateral Agent, the DIP Lenders and the Prepetition Term Loan A Lenders (either acting in concert or with the consent of each other party) and such application is not, to the extent requested by Collateral Agent, the DIP Lenders and the Prepetition Term Loan A Lenders, contested by Borrower in good faith and the relief requested is granted in an order that is not stayed pending appeal;
- (xxii) the cessation of Liens or super-priority claims granted with respect to this Agreement to be valid, perfected and enforceable in all respects; or

(xxiii) the Bankruptcy Court shall cease to have exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the DIP Loan Documents, the Orders, the DIP Liens, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan A Liens, the Prepetition Term Loan B Liens, the Prepetition Term Loan B Loan Documents and the DIP Collateral,

then, and in any such event, the Collateral Agent may, at the request of the Required DIP Lenders, by notice to the Borrower, (i) declare all or any portion of the DIP Loan then outstanding to be due and payable, whereupon all or such portion of the principal of the DIP Loan, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other DIP Loan Documents shall become due and payable immediately with respect to the DIP Loan Commitments so terminated and the DIP Loan so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party, (ii) subject to the Orders, exercise any and all of its other rights and remedies under applicable law, hereunder and under the other DIP Loan Documents, in each case, as directed by the Required DIP Lenders; and (iii) subject to the Orders, deliver written notice to the Bankruptcy Court that, pursuant to the Orders, the automatic stay provisions of section 362 of the Bankruptcy Code have been vacated and modified to the extent necessary to permit the Collateral Agent and the DIP Lenders to exercise all rights and remedies provided for in the DIP Loan Documents upon the expiration of the Remedies Notice Period; provided, that, with respect to subclauses (ii) and (iii), any exercise of rights and remedies in respect of the DIP Collateral shall be subject to the senior Liens and enforcement rights and other rights and remedies of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders set forth in the Orders and the Prepetition Term Loan A/B Intercreditor Agreement.

Section 9.02 Remedies Cumulative. The rights and remedies of the DIP Lenders and DIP Agents under this Agreement, the other DIP Loan Documents, and all other agreements shall be cumulative. Subject to the senior Liens and enforcement rights and other rights and remedies of the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders set forth in the Orders and the Prepetition Term Loan A/B Intercreditor Agreement, as applicable, the DIP Lenders and DIP Agents shall have all other rights and remedies not inconsistent herewith as provided under the Uniform Commercial Code, by law, or in equity. No exercise by any DIP Lender or any DIP Agent of one right or remedy shall be deemed an election, and no waiver by any DIP Lender or any DIP Agent of any Event of Default shall be deemed a continuing waiver. No delay by any DIP Lender or any DIP Agent shall constitute a waiver, election, or acquiescence by it.

Section 9.03 [Reserved].

Section 9.04 [Reserved].

Section 9.05 [Reserved].

Section 9.06 [Reserved].

Section 9.07 Deficiency. Each Loan Party shall remain liable for any deficiency if the proceeds of any sale or other disposition of any DIP Collateral are insufficient to pay the DIP Obligations and the fees and disbursements of any attorney employed by the DIP Agents or any other Secured Party to collect such deficiency.

## ARTICLE X

### DIP AGENTS

Section 10.01 Appointment. Each DIP Lender (and each subsequent maker of any DIP Loan by its making thereof) hereby irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to perform the duties of each such DIP Agent as set forth in this Agreement including: (i) to receive on behalf of each DIP Lender any payment of principal of or interest on the DIP Loan outstanding hereunder and all other amounts accrued hereunder for the account of the DIP Lenders and paid to such DIP Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each DIP Lender its Pro Rata Share of all payments so received; (ii) to distribute to each DIP Lender copies of all material notices and agreements received by such DIP Agent and not required to be delivered to each DIP Lender pursuant to the terms of this Agreement, provided that the DIP Agents shall not have any liability to the DIP Lenders for any DIP Agent's inadvertent failure to distribute any such notices or agreements to the DIP Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the DIP Obligations, the DIP Loan, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the DIP Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other DIP Loan Document; (v) to perform, exercise, and enforce any and all other rights and remedies of the DIP Lenders with respect to the Loan Parties, the DIP Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such DIP Agent of the rights and remedies specifically authorized to be exercised by such DIP Agent by the terms of this Agreement or any other DIP Loan Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other DIP Loan Document; and (vii) subject to Section 10.03 of this Agreement, to take such action as such DIP Agent deems appropriate on its behalf to administer the DIP Loan and the DIP Loan Documents and to exercise such other powers delegated to such DIP Agent by the terms hereof or the other DIP Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations) together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof. As to any matters not expressly provided for by this Agreement and the other DIP Loan Documents (including, without limitation, enforcement or collection of the DIP Loan), the DIP Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required DIP Lenders, and such instructions

of the Required DIP Lenders shall be binding upon all Lenders and all makers of the DIP Loan; provided, however, that the DIP Agents shall not be required to take any action which, in the reasonable opinion of any DIP Agent, exposes such DIP Agent to liability or which is contrary to this Agreement or any other DIP Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation. (a) The DIP Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other DIP Loan Documents. The duties of the DIP Agents shall be mechanical and administrative in nature. The DIP Agents shall not have by reason of this Agreement or any other DIP Loan Document a fiduciary relationship in respect of any DIP Lender. Nothing in this Agreement or any other DIP Loan Document, express or implied, is intended to or shall be construed to impose upon the DIP Agents any obligations in respect of this Agreement or any other DIP Loan Document except as expressly set forth herein or therein. Each DIP Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the DIP Loan hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the DIP Collateral, and the DIP Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any DIP Lender with any credit or other information with respect thereto, whether coming into their possession before the Initial DIP Loans hereunder or at any time or times thereafter, provided that, upon the reasonable request of a DIP Lender, each DIP Agent shall provide to such DIP Lender any documents or reports delivered to such DIP Agent by the Loan Parties pursuant to the terms of this Agreement or any other DIP Loan Document. If any DIP Agent seeks the consent or approval of the Required DIP Lenders to the taking or refraining from taking any action hereunder, such DIP Agent shall send notice thereof to each DIP Lender and each DIP Lender shall promptly respond thereto.

(b) Each DIP Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any DIP Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any DIP Lender). Any such Person shall benefit from this ARTICLE X to the extent provided by the applicable DIP Agent.

Section 10.03 Rights, Exculpation, Etc. The DIP Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other DIP Loan Documents, except for matters arising directly from their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction (but such exception for gross negligence or willful misconduct shall not apply to actions or omissions that were at the direction or instruction of the Required DIP Lenders). Without limiting the generality of the foregoing, the DIP Agents (i) may treat the payee of any DIP Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, in accordance with Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any DIP Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or

representation to any DIP Lender and shall not be responsible to any DIP Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other DIP Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other DIP Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the DIP Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any DIP Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other DIP Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the DIP Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the DIP Agents be responsible or liable to the DIP Lenders for any failure to monitor or maintain any portion of the DIP Collateral. The provisions of this Section 10.03 are subject to, and shall not limit in any respect, the provisions of Section 12.07. The DIP Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any DIP Lender to whom payment was due but not made, shall be to recover from other DIP Lenders any payment in excess of the amount which they are determined to be entitled. The DIP Agents may at any time request instructions from the DIP Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other DIP Loan Documents the DIP Agents are permitted or required to take or to grant, and the DIP Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the DIP Loan Documents until they shall have received such instructions from the Required DIP Lenders. Without limiting the foregoing, no DIP Lender shall have any right of action whatsoever against any DIP Agent as a result of such DIP Agent acting or refraining from acting under this Agreement or any of the other DIP Loan Documents in accordance with the instructions of the Required DIP Lenders.

Section 10.04 Reliance. Each DIP Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other DIP Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any DIP Agent is not reimbursed and indemnified by any Loan Party, and whether or not such DIP Agent has made demand on any Loan Party for the same, the DIP Lenders will, within five days of written demand by such DIP Agent, reimburse and indemnify such DIP Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such DIP Agent), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such DIP Agent in any way relating to or arising out of this Agreement or any of the other DIP Loan Documents or any action taken or omitted by

such DIP Agent under this Agreement or any of the other DIP Loan Documents, in proportion to each DIP Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no DIP Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such DIP Agent's gross negligence or willful misconduct. The obligations of the DIP Lenders under this Section 10.05 shall survive the payment in full of the DIP Loan and the other DIP Obligations and the termination of this Agreement.

Section 10.06 DIP Agents Individually. With respect to its Pro Rata Share of the Total DIP Loan Commitment hereunder and the DIP Loan made by it (if any), each DIP Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other DIP Lender or maker of a DIP Loan. The terms "DIP Lenders" or "Required DIP Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each DIP Agent in its individual capacity as a DIP Lender or one of the Required DIP Lenders. Each DIP Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Borrower as if it were not acting as a DIP Agent pursuant hereto without any duty to account to the other DIP Lenders.

Section 10.07 Successor DIP Agent.

(a) Any DIP Agent may at any time give at least thirty (30) Business Days' prior written notice of its resignation to the DIP Lenders and the Borrower, provided that no such notice shall be required in connection with the exercise of the Purchase Option and each of the DIP Lenders and the Borrower shall be deemed to have waived any such notice; provided, further, that concurrently with the consummation of the Purchase Option, the DIP Agent shall resign, effective immediately. Upon receipt of any such notice of resignation, the Required DIP Lenders shall have the right (with the consent of the Borrower, which consent shall not be unreasonably withheld, delayed or conditioned and which consent shall not be required during the continuance of an Event of Default) to appoint a successor DIP Agent, provided, that, in the event of the exercise and consummation of the Purchase Option, the new DIP Lenders thereunder shall have the right to appoint the successor DIP Agent. If no such successor DIP Agent shall have been so appointed by the Required DIP Lenders and shall have accepted such appointment within 30 Business Days after the retiring DIP Agent gives notice of its resignation, other than with respect to the consummation of the Purchase Option (or such earlier day as shall be agreed by the Required DIP Lenders) (the "Resignation Effective Date"), then, other than with respect to the Purchase Option, the retiring DIP Agent may (but shall not be obligated to), on behalf of the DIP Lenders, appoint a successor DIP Agent. Whether or not a successor DIP Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring DIP Agent shall be discharged from its duties and obligations hereunder and under the other DIP Loan Documents and (ii) all payments, communications and determinations provided to be made by,

to or through such retiring DIP Agent shall instead be made by or to each DIP Lender directly, until such time, if any, as the Required DIP Lenders appoint a successor DIP Agent as provided for above. Upon the acceptance of a successor DIP Agent's appointment as DIP Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring DIP Agent, and the retiring DIP Agent shall be discharged from all of its duties and obligations hereunder or under the other DIP Loan Documents. After the retiring DIP Agent's resignation hereunder and under the other DIP Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring DIP Agent in respect of any actions taken or omitted to be taken by it while the retiring DIP Agent was acting as a DIP Agent.

(c) On or before the Resignation Effective Date, the Loan Parties shall, or if the Loan Parties shall fail to do so, the DIP Lenders shall (severally, based upon their Pro Rata Shares) pay to the retiring DIP Agent, any fees, expenses or other amounts which have accrued to such retiring DIP Agent as of the Resignation Effective Date (including, without limitation, the reasonable costs and expenses of transferring such DIP Agent's responsibilities hereunder to the successor DIP Agent).

#### Section 10.08 Collateral Matters.

(a) Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances"), which amount shall not exceed \$500,000 in the aggregate together with any increase of the DIP Loan Commitment, as provided under Section 2.01(d)(i), which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the DIP Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrower of the DIP Loan and other DIP Obligations or to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the DIP Collateral in the same priorities as set forth in the Orders, and shall bear interest at a rate per annum equal to the rate then applicable pursuant to Section 2.04(a). The Collateral Agent Advances shall constitute DIP Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Collateral Agent shall notify each DIP Lender and the Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance (and Borrower shall send a copy of each such notice to the Prepetition Term Loan A Agent for distribution to the Prepetition Term Loan A Lenders). Without limitation to its obligations pursuant to Section 10.05, each DIP Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in US Dollars in immediately available funds, the amount equal to such DIP Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such DIP Lender, the Collateral Agent shall be entitled to recover such funds on demand from such DIP Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Federal Funds Rate plus 0.50%.

(b) The DIP Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any DIP Collateral upon termination of the Total DIP Loan Commitment and payment and satisfaction of all of the DIP Loan and all other DIP Obligations (other than unasserted contingent indemnification obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other DIP Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the DIP Lenders. Upon request by the Collateral Agent at any time, the DIP Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of DIP Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the DIP Lenders (as set forth in Section 10.08(b)), each DIP Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release DIP Collateral conferred upon the Collateral Agent under Section 10.08(b). Either without such confirmation (if the Collateral Agent has not requested such confirmation) or upon receipt by the Collateral Agent of such confirmation (if the Collateral Agent has requested such confirmation) from the DIP Lenders of its authority to release any particular item or types of DIP Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the DIP Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders upon such DIP Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the DIP Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the DIP Collateral retained by any Loan Party.

(d) Anything contained in any of the DIP Loan Documents to the contrary notwithstanding, the Loan Parties, each DIP Agent and each DIP Lender hereby agree that (i) no DIP Lender shall have any right individually to realize upon any of the DIP Collateral under any DIP Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the DIP Loan Documents may be exercised solely by the Collateral Agent for the benefit of the DIP Lenders in accordance with the terms thereof, (ii) subject to the Orders, in the event of a foreclosure by the Collateral Agent on any of the DIP Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any DIP Lender may be the purchaser of any or all of such DIP Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the DIP Agents and the DIP Lenders (but not any other DIP Agent or any DIP Lender or DIP Lenders in its or their respective individual capacities unless the Required DIP Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the DIP Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under

the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the DIP Obligations as a credit on account of the purchase price for any DIP Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any DIP Lender to assure that the DIP Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other DIP Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other DIP Loan Document, it being understood and agreed that in respect of the DIP Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the DIP Collateral as one of the DIP Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other DIP Lender, except as otherwise provided herein.

Section 10.09 Agency for Perfection. Each DIP Agent and each DIP Lender hereby appoints each other DIP Agent and each other DIP Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the DIP Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each DIP Agent and each DIP Lender hereby acknowledges that it holds possession of or otherwise controls any such DIP Collateral for the benefit of the DIP Agents and the DIP Lenders as secured party. Should the Administrative Agent or any DIP Lender obtain possession or control of any such DIP Collateral, the Administrative Agent or such DIP Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such DIP Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the DIP Collateral and under the DIP Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any DIP Agent's Customer Identification Program. Each DIP Lender acknowledges and agrees that neither such DIP Lender, nor any of its Affiliates, participants or assignees, may rely on any DIP Agent to carry out such DIP Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 CFR § 103.121, as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Terrorism Laws, including any programs involving any of the

following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the DIP Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each DIP Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the DIP Agents and the DIP Lenders, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term “agent” herein or in any other DIP Loan Document (or any other similar term) with reference to any DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each DIP Lender:

(a) is deemed to have requested that each DIP Agent furnish such DIP Lender, promptly after it becomes available, a copy of each field audit or examination report and each appraisal and valuations report, if any, with respect to the Parent or any of its Subsidiaries (each, a “Report”) prepared by or at the request of such DIP Agent, and each DIP Agent shall so furnish each DIP Lender with each such Report,

(b) expressly agrees and acknowledges that the DIP Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any DIP Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will rely significantly upon the Parent’s and its Subsidiaries’ books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any DIP Agent and any other DIP Lender preparing a Report harmless from any action the indemnifying DIP Lender may take or fail to take or any conclusion the indemnifying DIP Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying DIP Lender has

made or may make to the Borrower, or the indemnifying DIP Lender's participation in, or the indemnifying DIP Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any DIP Agent and any other DIP Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such DIP Agent and any such other DIP Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying DIP Lender.

Section 10.14 Orders and Intercreditor Agreements. Each DIP Lender hereby grants to the Collateral Agent all requisite authority to enter into or otherwise become bound by any intercreditor and/or subordination agreements entered into in connection with the Orders and to bind the DIP Lenders thereto by the Collateral Agent's entering into or otherwise becoming bound thereby, and no further consent or approval on the part of any DIP Lender is or will be required in connection with the performance by the Collateral Agent of such intercreditor and/or subordination agreements.

Section 10.15 [Intentionally Omitted].

Section 10.16 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the DIP Loan and all other DIP Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the DIP Agents and the DIP Lenders (including any claim for the compensation, expenses, disbursements and advances of the DIP Agents and the DIP Lenders and their respective agents and counsel and all other amounts due the DIP Agents and the DIP Lenders hereunder and under the other DIP Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each DIP Agent and each DIP Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the DIP Agents and the DIP Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent hereunder and under the other DIP Loan Documents.

## ARTICLE XI

### GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all DIP Obligations of the Borrower now or hereafter existing under any DIP Loan Document, whether for principal, interest (including, without limitation, all interest accruing during the Chapter 11 Cases), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrower, being the "Guaranteed DIP Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the DIP Agents and the DIP Lenders in enforcing any rights under the guaranty set forth in this ARTICLE XI. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed DIP Obligations and would be owed by the Borrower to the DIP Agents and the DIP Lenders under any DIP Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving the Borrower.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed DIP Obligations will be paid strictly in accordance with the terms of the DIP Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the DIP Agents or the DIP Lenders with respect thereto. Each Guarantor agrees that this ARTICLE XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any DIP Agent or any DIP Lender to any DIP Collateral. The obligations of each Guarantor under this ARTICLE XI are independent of the Guaranteed DIP Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this ARTICLE XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any DIP Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed DIP Obligations, or any other amendment or waiver of or any consent to departure from any DIP Loan Document, including, without limitation, any increase in the Guaranteed DIP Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any DIP Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed DIP Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any DIP Agent or any DIP Lender;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the DIP Agents or the DIP Lenders that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This ARTICLE XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed DIP Obligations is rescinded or must otherwise be returned by the DIP Agents, the DIP Lenders or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed DIP Obligations and this ARTICLE XI and any requirement that the DIP Agents or the DIP Lenders exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any DIP Agent or any DIP Lender to seek payment or recovery of any amounts owed under this ARTICLE XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any DIP Collateral, (iv) any requirement that any DIP Agent or any DIP Lender protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any DIP Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the DIP Agents and the DIP Lenders shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the DIP Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this ARTICLE XI, and acknowledges that this ARTICLE XI is continuing in nature and applies to all Guaranteed DIP Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This ARTICLE XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed DIP Obligations (other than indemnification obligations as to which no claim has been made) and all other amounts payable under this ARTICLE XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the DIP Agents and the DIP Lenders and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any DIP Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its DIP

Loan Commitments or its Loan owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such DIP Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. Unless and until all of the Guaranteed DIP Obligations and all other amounts payable under this Article shall have been paid in full in cash and all of the DIP Loan Commitments have been terminated (a) each Guarantor hereby subordinates any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this ARTICLE XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the DIP Agents or the DIP Lenders against any Loan Party or any other guarantor or any DIP Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, and (b) each Guarantor hereby agrees that it shall not exercise any right or remedy, direct or indirect, arising by reason of any performance such Guarantor has or may have as against any Loan Party with respect to the Guaranteed DIP Obligations. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of the DIP Agents and the DIP Lenders and shall forthwith be paid to the DIP Agents and the DIP Lenders to be credited and applied to the Guaranteed DIP Obligations and all other amounts payable under this ARTICLE XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as DIP Collateral for any Guaranteed DIP Obligations or other amounts payable under this ARTICLE XI thereafter arising. If (i) any Guarantor shall make payment to the DIP Agents and the DIP Lenders of all or any part of the Guaranteed DIP Obligations, (ii) all of the Guaranteed DIP Obligations and all other amounts payable under this ARTICLE XI shall be paid in full in cash and (iii) all DIP Loan Commitments have been terminated, the DIP Agents and the DIP Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed DIP Obligations resulting from such payment by such Guarantor. Notwithstanding anything to the contrary contained in this Section 11.05, no Guarantor shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, any Loan Party (including after payment in full of the Guaranteed DIP Obligations and any other amounts payable under this Article or after termination of the DIP Loan Commitments) if all or any portion of the DIP Obligations shall have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Loan Party whether pursuant to the Security Agreement or otherwise.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be mailed (certified mail, postage prepaid and return receipt requested), telecopied or delivered by hand, Federal Express or other reputable overnight courier, if to any Loan Party, at the following address:

Garden Fresh Restaurant Corp.  
15822 Bernardo Center Drive, Suite A  
San Diego, California 92127  
Attention: Chief Executive Officer  
Telephone: (858) 675-1600 x1002  
email: [ceo@gardenfreshcorp.com](mailto:ceo@gardenfreshcorp.com)

with a copy to:

Morgan, Lewis & Bockius  
101 Park Avenue  
New York, New York 10178  
Attention: Patricia Brennan  
Telephone: (212) 309-6814  
Telecopier: (212) 309-6001  
Email: [patricia.brennan@morganlewis.com](mailto:patricia.brennan@morganlewis.com)

if to the Collateral Agent or the Administrative Agent, to it at the following address:

Cortland Capital Market Services LLC  
225 West Washington Street, Suite 2100  
Chicago, IL 60606  
Attention: Ryan Warren and Legal Department  
Telecopier: (312) 564-5100  
Email: [ryan.warren@cortlandglobal.com](mailto:ryan.warren@cortlandglobal.com) and  
[legal@cortlandglobal.com](mailto:legal@cortlandglobal.com)

with copies (which shall not constitute notice) to:

Holland & Knight LLP  
131 S. Dearborn Street, 30th Floor  
Chicago, Illinois 60603  
Attention: Joshua M. Spencer  
Telecopier: (312) 578-6666  
Email: [Joshua.spencer@hklaw.com](mailto:Joshua.spencer@hklaw.com)

and;

Holland & Knight LLP  
31 West 52nd Street

New York, NY 10019  
Attention: Barbra R. Parlin  
Telecopier: (212) 385-9010  
Email: [barbra.parlin@hkllaw.com](mailto:barbra.parlin@hkllaw.com)

and;

Stroock & Stroock & Lavan  
180 Maiden Lane  
New York, NY 10038  
Attention: Jayme Goldstein  
Fax: (212) 806-6006  
Email: [jgoldstein@stroock.com](mailto:jgoldstein@stroock.com)

and:

BP Salad Holdings LLC  
1620 26th Street, Suite 6000N  
Santa Monica, CA 90404  
Attention: Lawrence Goldman, Esq. and Gary Hobart  
Telephone: (310) 996-9700  
Telecopier: (310) 996-9669

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01. All such notices and other communications shall be effective, (i) if mailed (certified mail, postage prepaid and return receipt requested), when received or 3 days after deposited in the mails, whichever occurs first, (ii) if telecopied, when transmitted and confirmation received, or (iii) if delivered by hand, Federal Express or other reputable overnight courier, upon delivery, except that notices to any DIP Agent pursuant to ARTICLE II shall (x) not be effective until actually received by such DIP Agent, and (y) if not actually received before 12:00 noon (New York City time) on a Business Day, shall not be effective until the next-following Business Day.

(b) Electronic Communications.

- (i) Each DIP Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the DIP Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the DIP Agents, provided that the foregoing shall not apply to notices to any DIP Lender pursuant to ARTICLE II if such DIP Lender has notified the DIP Agents that it is incapable of receiving notices under such Article by electronic communication.

- (ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email 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.

Section 12.02 Amendments, Etc. Subject to the Orders, no amendment or waiver of any provision of this Agreement or any other DIP Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the DIP Agents and the DIP Lenders or extending an existing Lien over additional property, by the DIP Agents and the Borrower, (y) in the case of any other waiver or consent, by the Administrative Agent and the Required DIP Lenders (or by the Administrative Agent with the consent of the Required DIP Lenders) and (z) in the case of any other amendment, by the Administrative Agent and the Required DIP Lenders (or by the Administrative Agent with the consent of the Required DIP Lenders) and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

- (i) increase the DIP Loan Commitment of any DIP Lender, reduce the principal of, or interest on, the DIP Loan payable to any DIP Lender, reduce the amount of any fee payable for the account of any DIP Lender, or postpone or extend any scheduled date fixed for any payment (but not any prepayment) of principal of, or interest or fees on, the DIP Loan payable to any DIP Lender, in each case, without the written consent of such DIP Lender (except (1) in connection with the waiver of default rate interest (which shall be effective with the consent of the Required DIP Lenders) and (2) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the stated rate of interest or a reduction of fees for purposes of this clause (i));
- (ii) change the percentage of the DIP Loan Commitments or of the aggregate unpaid principal amount of the DIP Loan that is required for the DIP Lenders or any of them to take any action hereunder without the written consent of each DIP Lender directly affected thereby;

- (iii) amend the definition of “Required DIP Lenders” or “Pro Rata Share” without the written consent of each DIP Lender;
- (iv) release all or a substantial portion of the DIP Collateral (except as otherwise provided in the Orders, this Agreement and the other DIP Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the DIP Agents and the DIP Lenders, or release the Borrower or all or substantially all of the Guarantors, in each case, without the written consent of each DIP Lender; or
- (v) amend, modify or waive Section 4.03 or this Section 12.02 of this Agreement without the written consent of each DIP Lender.

Notwithstanding the foregoing:

(A) no amendment, waiver or consent shall, unless in writing and signed by a DIP Agent, affect the rights or duties of such DIP Agent (but not in its capacity as a DIP Lender) under this Agreement or the other DIP Loan Documents;

(B) (i) no term (including any defined term) or provision under the DIP Loan Documents the breach of which would constitute a TLA Event of Default, may be amended or otherwise modified (including by waiver or consent), by any DIP Agent, any of the DIP Lenders and/or any of the Loan Parties, in each case under this clause (i) without the prior written consent of the Prepetition Term Loan A Agent, the Prepetition Term Loan A Required Lenders or the Prepetition Term Loan A Lenders, as applicable, and (ii) none of the DIP Agents or the DIP Lenders may forbear with respect to, or waive (including by consent), any TLA Event of Default or any term (including any defined term) or provision which if breached would constitute a TLA Event of Default, in each case, under this clause (ii), without the prior written consent of the Prepetition Term Loan A Agent, Prepetition Term Loan A Required Lenders or the Prepetition Term Loan A Lenders, as applicable; and

(C) upon the occurrence and during the continuance of an Event of Default, the consent of the Borrower shall not be required to change any order of priority set forth in Section 2.05(d) and Section 4.03.

(b) If any action to be taken by the DIP Agents or DIP Lenders hereunder requires the consent, authorization, or agreement of the Required DIP Lenders, all of the DIP Lenders or any DIP Lender affected thereby, and a DIP Lender other than a BP Party (the “Holdout Lender”) fails to give its consent, authorization, or agreement (and the Borrower and all other Required DIP Lenders, Lenders, or DIP Lenders affected thereby, as applicable, have given their consent, authorization or agreement), then BP, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a “Replacement DIP Lender”), and the Holdout Lender shall have no right to refuse to be replaced hereunder. A Replacement DIP Lender may be BP or any

Person selected by BP; provided, that if any Person proposed as Replacement DIP Lender by BP is not (i) a BP Party or (ii) an existing Lender, then the Borrower's consent shall be required (not to be unreasonably withheld, conditioned or delayed). Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than fifteen (15) Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement DIP Lender shall execute and deliver to Administrative Agent an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever; provided, if the consent, authorization or agreement it has failed to give would have directly resulted in a decrease in pricing in respect of the DIP Obligations, then such Holdout Lender shall be repaid its share of the outstanding Obligations calculated as if this Agreement was terminated and all DIP Obligations were paid in full as a result of a voluntary prepayment on the effective date of such replacement. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered to Administrative Agent such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07(b).

(c) If any amendment or modification to any of the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents amends or modifies any covenant (including any financial covenant) or event of default contained in any such document (or any related definitions), in each case, in a manner that is more restrictive than the applicable provisions permit as of the date thereof, or if any amendment or modification to the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Sponsor Subordinated Debt Documents adds an additional covenant or event of default therein, the Borrower acknowledges and agrees that this Agreement or the other DIP Loan Documents, as the case may be, shall be automatically amended or modified to affect similar amendments or modifications reflecting existing cushions with respect to this Agreement or such other DIP Loan Documents, without the need for any further action or consent by the Borrower or any other party. In furtherance of the foregoing, the Borrower shall permit the DIP Agents and DIP Lenders to document each such similar amendment or modification to this Agreement or such other DIP Loan Document or insert a corresponding new covenant or event of default in this Agreement or such other DIP Loan Document without any need for any further action or consent by the Borrower. Nothing contained in this Section shall be deemed to permit the Loan Parties, the Prepetition Term Loan A Agent, the Prepetition Term Loan A Lenders, the Prepetition Term Loan B Agent, the Prepetition Term Loan B Lenders, the Prepetition Term Loan C Agent, the Prepetition Term Loan C Lenders, the Prepetition Term Loan D Agent, the Prepetition Term Loan D Lenders, the Sponsor Subordinated Debt Agent or the holders of the Sponsor Subordinated Debt to amend or otherwise modify any provision of, as applicable, the Prepetition Term Loan A Loan Documents, the Prepetition Term Loan B Loan Documents, the Prepetition Term Loan C Loan Documents, the Prepetition Term Loan D Loan Documents or the Subordinated Debt Loan Documents, as applicable, except as otherwise expressly permitted by the Orders, the intercreditor agreements applicable thereto (as in effect on the Closing Date and on the date thereof) or the Subordination Agreement, as applicable.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any DIP Agent or any DIP Lender to exercise, and no delay in exercising, any right hereunder or under any other DIP Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any DIP Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the DIP Agents and the DIP Lenders provided herein and in the other DIP Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the DIP Agents and the DIP Lenders under any DIP Loan Document against any party thereto are not conditional or contingent on any attempt by the DIP Agents and the DIP Lenders to exercise any of their rights under any other DIP Loan Document against such party or against any other Person.

Section 12.04 Expenses; Taxes; Attorneys' Fees. The Borrower will pay on demand, all costs and expenses incurred by or on behalf of each DIP Agent (and, in the case of clauses (c) through (n) below, each DIP Lender), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable fees, costs, client charges and expenses of counsel for each DIP Agent (and, in the case of clauses (c) through (n) below, each DIP Lender), accounting, due diligence, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of DIP Collateral, the rating of the DIP Loan, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other DIP Loan Documents (including, without limitation, the preparation of any additional DIP Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any syndication of the DIP Loan or DIP Loan Commitments, (c) any requested amendments, waivers or consents to this Agreement or the other DIP Loan Documents whether or not such documents become effective or are given, (d) the preservation and protection of the DIP Agents' or any of the DIP Lenders' rights under this Agreement or the other DIP Loan Documents, (e) the defense of any claim or action asserted or brought against any DIP Agent or any DIP Lender by any Person that arises from or relates to this Agreement, any other DIP Loan Document, the DIP Agents' or the DIP Lenders' claims against any Loan Party, or any and all matters in connection therewith, (f) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other DIP Loan Document, (g) the filing of any petition, complaint, answer, motion or other pleading by any DIP Agent or any DIP Lender, or the taking of any action in respect of the DIP Collateral or other security, in connection with this Agreement or any other DIP Loan Document, (h) the protection, collection, lease, sale, taking possession of or liquidation of, any DIP Collateral or other security in connection with this Agreement or any other DIP Loan Document, (i) any attempt to enforce any Lien or security interest in any DIP Collateral or other security in connection with this Agreement or any other DIP Loan Document, (j) any attempt to collect from any Loan Party, (k) all liabilities and costs of any DIP Agent or DIP Lender arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources alleged to have resulted from any Release of Hazardous Materials or any harm or injury alleged to have resulted from any Release of Hazardous Materials on, at, upon, under, from or into such property, (l) any Environmental Action or Environmental Liabilities and Costs, (m) any Remedial Actions

incurred by DIP Agent or DIP Lender in connection with any Loan Party or assets or properties at any time owned, leased or operated by any Loan Party, or (n) any Environmental Liabilities and Costs incurred by DIP Agent or DIP Lender in connection with any Environmental Lien upon any property owned, leased or operated by any Loan Party; provided, however, that the Borrower shall not be obligated to any DIP Agent or DIP Lender for any of clauses (e) through (n) above to the extent the amount claimed thereunder was caused by the gross negligence, bad faith or willful misconduct of the Person requesting payment of such costs and expenses, or (o) the receipt by any DIP Agent or any DIP Lender of any advice from professionals with respect to any of the foregoing for which indemnification or reimbursement is otherwise available. Without limitation of the foregoing or any other provision of any DIP Loan Document: (x) the Borrower agrees to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other DIP Loan Documents, and (y) if the Borrower fails to perform any covenant or agreement contained herein or in any other DIP Loan Document, any DIP Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such DIP Agent incurred in connection therewith shall be reimbursed on demand by the Borrower.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default and provided that the Prepetition Term Loan A Obligations have been indefeasibly repaid in full in cash, any DIP Agent or any DIP Lender may, and is hereby authorized to, at any time and from time to time, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final, but excluding (a) accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party's employees and (b) trust or tax withholding accounts) at any time held and other Indebtedness at any time owing by such DIP Agent or such DIP Lender to or for the credit or the account of any Loan Party against any and all DIP Obligations of the Loan Parties then due and payable under any DIP Loan Document, irrespective of whether or not such DIP Agent or such DIP Lender shall have made any demand hereunder. The rights of the DIP Agents and the DIP Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the DIP Agents and the DIP Lenders may have under this Agreement or any other DIP Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other DIP Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each DIP Agent and each DIP Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other DIP Loan Documents without the prior written consent of each DIP Lender and, for so long as the Prepetition Term Loan A Obligations have not been indefeasibly repaid in full in cash, the Prepetition Term Loan A Lenders, and any

such assignment without the DIP Lenders' and the Prepetition Term Loan A Lenders' prior written consent shall be null and void.

(b) Each DIP Lender may assign to one or more other DIP Lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to all or a portion of the DIP Loan made by it; provided, however, that (i) such assignment is in an amount which is at least \$500,000 or a multiple of \$500,000 in excess thereof (or the remainder of such DIP Lender's DIP Loan) (except such minimum amount shall not apply to an assignment by a DIP Lender to (x) a DIP Lender, an Affiliate of such DIP Lender or a Related Fund of such DIP Lender or (y) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$500,000 or a multiple of \$500,000 in excess thereof), (ii) the parties to each such assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Administrative Agent, for the benefit of the Administrative Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a DIP Lender to a DIP Lender, an Affiliate of such DIP Lender or a Related Fund of such DIP Lender), and (iii) no such assignment shall be made to any Loan Party, the Permitted Holders, the Sponsor Subordinated Debt Agent, the holders of the Sponsor Subordinated Debt or any of their respective Affiliates. Notwithstanding the foregoing conditions in connection with the Purchase Option the only condition required with respect to such assignment is the execution and delivery to the Collateral Agent (and the Administrative Agent, if applicable) of an Assignment and Acceptance, together with any promissory note subject to such assignment. The Purchase Option shall be binding on each DIP Lender from time to time party to this Agreement. Upon such execution and delivery and satisfaction of the requirements of Section 12.07(e), from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, (A) the assignee thereunder shall become a "DIP Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning DIP Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning DIP Lender's rights and obligations under this Agreement, such DIP Lender shall cease to be a party hereto). Notwithstanding anything to the contrary contained in this Section 12.07(b), a DIP Lender may assign any or all of its rights under the DIP Loan Documents to an Affiliate of such DIP Lender or a Related Fund of such DIP Lender without delivering an Assignment and Acceptance to the DIP Agents or to any other Person; provided, however, that (I) the Borrower and the Administrative Agent may continue to deal solely and directly with such assigning DIP Lender until an Assignment and Acceptance has been delivered to the Administrative Agent for recordation on the Register, (II) the Collateral Agent may continue to deal solely and directly with such assigning DIP Lender until receipt by the Administrative Agent of a copy of the fully executed Assignment and Acceptance pursuant to Section 12.07(e), (III) the failure of such assigning DIP Lender to deliver an Assignment and Acceptance to the DIP Agents shall not affect the legality, validity, or binding effect of such assignment, and (IV) an Assignment and Acceptance between the assigning DIP Lender and an Affiliate of such DIP Lender or a Related

Fund of such DIP Lender shall be effective as of the date specified in such Assignment and Acceptance and recordation on the Related Party Register referred to in the last sentence of Section 12.07(d) below.

(c) By executing and delivering an Assignment and Acceptance, the assigning DIP Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning DIP Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other DIP Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other DIP Loan Document furnished pursuant hereto; (ii) except as provided in the last sentence of this Section 12.07(c), the assigning DIP Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other DIP Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other DIP Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning DIP Lender, any DIP Agent or any DIP Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other DIP Loan Documents; (v) such assignee appoints and authorizes the DIP Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other DIP Loan Documents as are delegated to the DIP Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other DIP Loan Documents are required to be performed by it as a DIP Lender.

(d) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the “Register”) for the recordation of the names and addresses of the DIP Lenders and the DIP Loan Commitments of, and the principal amount of each DIP Lender’s Pro Rata Share of the DIP Loan (and stated interest thereon) (the “Registered Loans”) owing to each DIP Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the DIP Agents and the DIP Lenders may treat each Person whose name is recorded in the Register as a DIP Lender hereunder for all purposes of this Agreement and the other DIP Loan Documents. The Register shall be available for inspection by the Borrower and any DIP Lender at any reasonable time and from time to time upon reasonable prior notice. This Section 12.07(d) shall be construed so that the DIP Loan and DIP Loan Commitments are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Internal Revenue Code. In the case of an assignment pursuant to the last sentence of Section 12.07(b) as to which an Assignment and Acceptance is not delivered to the Administrative Agent, the assigning DIP Lender shall, acting solely for this

purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained, a register (the “Related Party Register”) comparable to the Register on behalf of the Borrower. The Related Party Register shall be available for inspection by the Borrower and any DIP Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon receipt by the Administrative Agent of (i) a completed Assignment and Acceptance, (ii) the applicable “know your customer” documentation of the assignee and (iii) the processing and recordation fee referenced in Section 12.07(b) (if applicable), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the DIP Loan subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent), provide to the Administrative Agent a copy of the fully executed Assignment and Acceptance, and immediately provide to the Borrower a copy of the fully executed Assignment and Acceptance.

(f) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register or the Related Party Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register or the Related Party Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the DIP Agents shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered on the Register as the owner thereof for the purpose of receiving all payments thereon, notwithstanding notice to the contrary.

(g) In the event that any DIP Lender sells participations in a Registered Loan, such DIP Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the “Participant Register”). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any DIP Lender at any reasonable time and from time to time upon reasonable prior notice.

(h) Any Non-U.S. Lender who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(i) Each DIP Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other DIP Loan Documents (including, without limitation, all or a portion of the DIP Loan made by it); provided, that (i) such DIP Lender's obligations under this Agreement and the other DIP Loan Documents shall remain unchanged; (ii) such DIP Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrower, the DIP Agents and the other DIP Lenders shall continue to deal solely and directly with such DIP Lender in connection with such DIP Lender's rights and obligations under this Agreement and the other DIP Loan Documents; and (iii) a participant shall not be entitled to require such DIP Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the DIP Loan, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the DIP Loan or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the DIP Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other DIP Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.09 of this Agreement with respect to its participation in any portion of the DIP Loan as if it was a DIP Lender.

(j) 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 DIP Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to such DIP Lender pursuant to securitization or similar credit facility (a "Securitization"); provided that no such pledge or assignment shall release such DIP Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such DIP Lender as a party hereto. The Loan Parties shall cooperate with such DIP Lender and its Affiliates to effect the Securitization including, without limitation, by providing such information as may be reasonably requested by such DIP Lender in connection with the rating of its DIP Loan or the Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other DIP Loan Document *mutatis mutandis*.

Section 12.09 GOVERNING LAW. THE VALIDITY, CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER DIP LOAN DOCUMENT IN RESPECT OF SUCH OTHER DIP LOAN DOCUMENT) AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND

CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND, AS MAY BE APPLICABLE, THE BANKRUPTCY CODE.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. EACH OF THE PARTIES HERETO AGREES THAT ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DIP LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURTS OF THE STATE OF DELAWARE, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE COLLATERAL AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE THE COLLATERAL AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 12.10, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION OR DISPUTE INVOLVING, RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER DIP LOAN DOCUMENTS; PROVIDED, THAT NOTHING IN THIS SECTION 12.10 SHALL AFFECT THE RIGHT OF THE DIP AGENTS OR ANY DIP LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY OR ANY COLLATERAL IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES, AND DOCUMENTS IN ANY SUIT, ACTION, OR PROCEEDING BROUGHT IN THE UNITED STATES OF AMERICA ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER DIP LOAN DOCUMENTS BY THE MAILING (BY REGISTERED MAIL OR CERTIFIED MAIL, POSTAGE PREPAID) OR DELIVERING OF A COPY OF SUCH PROCESS TO SUCH LOAN PARTY C/O THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE DIP AGENTS AND THE DIP LENDERS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF

ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH DIP AGENT AND EACH DIP LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER DIP LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR THE OTHER DIP LOAN DOCUMENTS, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY DIP AGENT OR ANY DIP LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY DIP AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE DIP AGENTS AND THE DIP LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the DIP Agents, the DIP Lenders, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders. Except as otherwise expressly set forth herein to the contrary or in any other DIP Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any DIP Agent, any DIP Lender, the Prepetition Term Loan A Agent or any Prepetition Term Loan A Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party, to which any DIP Agent or any DIP Lender has succeeded thereto and under which the Prepetition Term Loan A Agent or any Prepetition Term Loan A Lender has been provided any such rights, such Action shall be required to be in writing and may be withheld or denied by such DIP Agent, such DIP Lender, the Prepetition Term Loan A Agent or such Prepetition Term Loan A Lender, in their respective discretion.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any DIP Agent or any DIP Lender for repayment or recovery of any amount or amounts received by such DIP Agent or such DIP Lender in payment or on account of any of the DIP Obligations, such DIP Agent or such DIP Lender shall give prompt notice of such claim to each other DIP Agent and DIP Lender and the Borrower, and if such DIP Agent or such DIP Lender repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such DIP Agent or such DIP Lender or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such DIP Agent or such DIP Lender with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding

upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other DIP Loan Documents or the termination of this Agreement or the other DIP Loan Documents, and (B) it shall be and remain liable to such DIP Agent or such DIP Lender hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such DIP Agent or such DIP Lender. The provisions of this Section shall survive the repayment of the DIP Obligations and release of the Liens granted under the DIP Loan Documents.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other DIP Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each DIP Agent and each DIP Lender and all of their respective Affiliates, officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Closing Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other DIP Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any DIP Agent's or any DIP Lender's furnishing of funds to the Borrower under this Agreement or the other DIP Loan Documents, including, without limitation, the management of any DIP Loan, (iii) the DIP Agents and the DIP Lenders relying on any instructions of the Borrower or the handling of the Loan Account and DIP Collateral of the Borrower as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other DIP Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other DIP Loan Documents, or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence, bad faith or willful misconduct of any Indemnitee or any of its Related Parties, as determined by a final judgment of a court of competent jurisdiction. "Related Parties" shall mean, with respect to any Indemnified Party, such Indemnified Party and each of its officers, directors and employees.

(b) Without limiting Section 12.15(a) hereof, each Loan Party agrees to, jointly and severally, defend, indemnify, and hold harmless the Indemnitees against any and all (a) Environmental Liabilities and Costs and (b) all other claims, demands, penalties, fines, liability (including strict liability), losses, damages, costs and expenses (including without limitation, reasonable legal fees and expenses, consultant fees and laboratory fees), arising out of (i) any Releases or threatened Releases (x) at any property presently or formerly owned or operated by any Loan Party or any Subsidiary of any Loan Party, or any of their respective predecessors in interest, or (y) of any Hazardous Materials generated and disposed of by any Loan Party or any Subsidiary of any Loan Party, or any of their respective predecessors in interest; (ii) any violations of Environmental Laws by any Loan Party or any Subsidiary; (iii) any

Environmental Action asserted against any Loan Party or any Subsidiary of any Loan Party; (iv) any personal injury (including wrongful death) or property damage (real or personal) arising out of exposure to Hazardous Materials used, handled, generated, transported or disposed by any Loan Party or any Subsidiary of any Loan Party, or any predecessor in interest; and (v) any breach of any warranty or representation regarding environmental matters made by the Loan Parties in Section 6.01(r) or the breach of any covenant made by the Loan Parties in Section 7.01(j). Notwithstanding the foregoing, the Loan Parties shall not have any obligation to any Indemnitee under this subsection (b) regarding any potential environmental matter covered hereunder which is caused by the bad faith, gross negligence or willful misconduct of any Indemnitee, as determined by a final judgment of a court of competent jurisdiction.

(c) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(d) No party hereto shall assert, and each party hereto hereby waives, any claim based on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other DIP Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any DIP Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(e) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the DIP Obligations and discharge of any Liens granted under the DIP Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the DIP Loan, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the DIP Loan Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, including, without limitation, the fees set forth in the Fee Letter, shall at all times be ascertained from the records of the DIP Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each DIP Agent and each DIP Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the DIP Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each DIP Agent and each DIP Lender, and their respective successors and assigns, except

that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each DIP Agent and each DIP Lender, and any assignment by any DIP Lender shall be governed by Section 12.07 hereof.

Section 12.18 Interest. It is the intention of the parties hereto that each DIP Agent and each DIP Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other DIP Loan Document would be usurious as to any DIP Agent or any DIP Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such DIP Agent or such DIP Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other DIP Loan Document or any agreement entered into in connection with or as security for the DIP Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any DIP Agent or any DIP Lender that is contracted for, taken, reserved, charged or received by such DIP Agent or such DIP Lender under this Agreement or any other DIP Loan Document or agreements or otherwise in connection with the DIP Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such DIP Agent or such DIP Lender on the principal amount of the DIP Obligations (or, to the extent that the principal amount of the DIP Obligations shall have been or would thereby be paid in full, refunded by such DIP Agent or such DIP Lender, as applicable, to the Borrower); and (ii) in the event that the maturity of the DIP Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any DIP Agent or any DIP Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such DIP Agent or such DIP Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such DIP Agent or such DIP Lender, as applicable, on the principal amount of the DIP Obligations (or, to the extent that the principal amount of the DIP Obligations shall have been or would thereby be paid in full, refunded by such DIP Agent or such DIP Lender to the Borrower). All sums paid or agreed to be paid to any DIP Agent or any DIP Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such DIP Agent or such DIP Lender, be amortized, prorated, allocated and spread throughout the full term of the DIP Loan until payment in full so that the rate or amount of interest on account of the DIP Loan hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any DIP Agent or any DIP Lender on any date shall be computed at the Highest Lawful Rate applicable to such DIP Agent or such DIP Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such DIP Agent or such DIP Lender would be less than the amount of interest payable to such DIP Agent or such DIP Lender computed at the Highest Lawful Rate applicable to such DIP Agent or such DIP Lender, then the amount of interest payable to such DIP Agent or such DIP Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such DIP Agent or such DIP Lender until the total amount of interest payable to such DIP Agent or such DIP Lender shall equal the total amount of

interest which would have been payable to such DIP Agent or such DIP Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term “applicable law” shall mean that law in effect from time to time and applicable to the loan transaction between the Borrower, on the one hand, and the DIP Agents and the DIP Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the DIP Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each DIP Agent and each DIP Lender agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other DIP Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any DIP Agent or any DIP Lender of any such information (i) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, trustees, counsel, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization so long as such assignee or participant (or prospective assignee or participant) first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 12.19; (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor, accountant or any nationally recognized rating agency or otherwise to the extent consisting of general portfolio information that does not identify Loan Parties; (vi) in connection with any litigation to which any DIP Agent or any DIP Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other DIP Loan Document or any action or proceeding relating to this Agreement or any other DIP Loan Document or the enforcement of rights hereunder or thereunder; or (viii) with the consent of the Borrower. Each DIP Agent and each DIP Lender agrees that, upon receipt of a request or identification of the requirement for disclosure pursuant to clause (vi) hereof, it will make reasonable efforts to keep the Loan Parties informed of such request or identification.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using

the name of a DIP Agent, any DIP Lender or any of their respective Affiliates or referring to this Agreement or any other DIP Loan Document without the prior written consent of such DIP Agent or such DIP Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such DIP Agent or such DIP Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each DIP Agent and each DIP Lender, after consultation with the Borrower, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such DIP Agent or such DIP Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such DIP Agent or such DIP Lender shall deem appropriate.

Section 12.21 Integration. This Agreement, the Orders, the Prepetition Term Loan A/B Intercreditor Agreement, the Prepetition Term Loan C/D Intercreditor Agreement and the other DIP Loan Documents together reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA Patriot Act. Each DIP Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrower, which information includes the name and address of each such entity and other information that will allow such DIP Lender to identify the entities composing the Borrower in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any DIP Lender may reasonably require from time to time in order to enable such DIP Lender to comply with the USA PATRIOT Act.

Section 12.23 Orders and Other Agreements. Notwithstanding anything to the contrary herein or in any of the DIP Loan Documents, the provisions of this Agreement are subject to the terms, covenants, conditions and provisions of the Orders and the Prepetition Term Loan A/B Intercreditor Agreement, which, among other things, set out the priority, with respect to the DIP Collateral, as between, on the one hand, the Prepetition Term Loan A Agent and the Prepetition Term Loan A Lenders, and, on the other hand, the DIP Agents and the DIP Lenders. In the event of a conflict between (a) the terms of the Orders and this Agreement, the terms of the Orders shall govern and control and (b) the Prepetition Term Loan A/B Intercreditor Agreement and the Orders, the Orders shall govern and control.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

GARDEN FRESH RESTAURANT CORP.

By: \_\_\_\_\_  
Name:  
Title:

GUARANTORS:

GARDEN FRESH HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

GF HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

GARDEN FRESH PROMOTIONS, LLC

By: \_\_\_\_\_  
Name:  
Title:

GARDEN FRESH INTERMEDIATE HOLDING,  
LLC

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

COLLATERAL AGENT:

CORTLAND CAPITAL MARKET SERVICES  
LLC

By: \_\_\_\_\_  
Name:  
Title:

ADMINISTRATIVE AGENT:

CORTLAND CAPITAL MARKET SERVICES  
LLC

By: \_\_\_\_\_  
Name:  
Title

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

DIP LENDERS:

BP SALAD HOLDINGS LP,  
as DIP Lender

By: \_\_\_\_\_

Name:

Title:

SCHEDULE 1.01(A)

**DIP LENDERS AND DIP LOAN COMMITMENTS**

<b>DIP Lender</b>	<b>DIP Loan Commitment</b>
BP SALAD HOLDINGS LP	\$3,500,000.00
<b>TOTAL:</b>	<b>\$3,500,000.00</b>

**EXHIBIT C**

**Approved Budget**

## Garden Fresh | DIP Budget

(\$ in thousands)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Post Close
Week Ending Sunday	9-Oct	16-Oct	23-Oct	30-Oct	6-Nov	13-Nov	20-Nov	27-Nov	4-Dec	Thereafter
<b>Total Receipts</b>	<b>\$ 5,122</b>	<b>\$ 5,047</b>	<b>\$ 4,856</b>	<b>\$ 4,577</b>	<b>\$ 5,256</b>	<b>\$ 4,864</b>	<b>\$ 6,095</b>	<b>\$ 5,538</b>	<b>\$ 5,125</b>	-
Disbursements:										
Food and Operating	1,281	1,746	1,445	1,346	1,491	1,741	1,791	1,519	1,732	-
Payroll, Rent, Utilities and Other	2,505	2,987	2,103	4,147	4,025	2,961	2,077	3,756	4,154	-
Insurance Related	734	30	30	30	600	30	30	30	600	-
Capital Expenditures	110	110	110	135	135	135	135	135	135	-
Interest	931	-	-	-	724	-	-	-	724	-
Debtors Professionals	-	-	-	-	-	420	-	-	-	890
UCC Professionals	-	-	-	-	-	50	-	-	-	75
Other Professionals and Bankruptcy Expenses	309	-	600	-	65	250	-	-	65	365
<b>Total Disbursements</b>	<b>5,869</b>	<b>4,873</b>	<b>4,289</b>	<b>5,658</b>	<b>7,040</b>	<b>5,587</b>	<b>4,033</b>	<b>5,440</b>	<b>7,411</b>	<b>1,330</b>
<b>Net Change in Cash</b>	<b>(747)</b>	<b>174</b>	<b>567</b>	<b>(1,081)</b>	<b>(1,784)</b>	<b>(723)</b>	<b>2,062</b>	<b>98</b>	<b>(2,286)</b>	<b>(1,330)</b>
Cash Balance - Beginning	1,736	1,989	2,163	2,729	1,648	1,864	1,141	3,203	3,301	1,016
Net Cash Flow	(747)	174	567	(1,081)	(1,784)	(723)	2,062	98	(2,286)	(1,330)
DIP Draw	1,000	-	-	-	2,000	-	-	-	-	500
<b>Cash Balance - Ending</b>	<b>\$ 1,989</b>	<b>\$ 2,163</b>	<b>\$ 2,729</b>	<b>\$ 1,648</b>	<b>\$ 1,864</b>	<b>\$ 1,141</b>	<b>\$ 3,203</b>	<b>\$ 3,301</b>	<b>\$ 1,016</b>	<b>\$ 186</b>