

**DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT**

**THIS DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of the Effective Date among **SA Mezz Holdings LLC** (the “**Lender**”), and **SA-Lakeland, LLC, a Florida limited liability company; SA-Clewiston, LLC, a Florida limited liability company; SA-St. Petersburg, LLC, a Florida limited liability company; CHC-SPC Operator, Inc., a Florida corporation; and CHC-CLP Operator Holding, LLC, a Florida limited liability company** (collectively, the “**Borrowers**”), provides the terms on which Lender shall lend to Borrowers and Borrowers shall repay Lender. The parties agree as follows:

**RECITALS**

WHEREAS, on September 3, 2014 and September 4, 2014 (collectively, the “**Petition Date**”), the Borrowers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division (the “**Bankruptcy Court**”); and

WHEREAS, the Borrowers’ Chapter 11 Cases are being jointly administered in *In re New Louisiana Holdings, LLC, et al.*, Case No. 14-50756; and

WHEREAS, the Borrowers have asked Lender to make post-petition loans and advances to the Borrowers consisting of a debtor-in-possession credit facility in an aggregate principal amount of Three Million and No/100 Dollars (\$3,000,000.00), broken down into Interim Borrowing Advances and Final Borrowing Advances as more fully set forth in this Agreement; and

WHEREAS, the Lender is willing to provide such financing, subject to the terms and conditions set forth herein, including that all of the DIP Obligations hereunder and under the other DIP Loan Documents constitute allowed superpriority administrative expense claims pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code in the Chapter 11 Cases and are secured by liens on substantially all of Borrowers’ property as set forth herein and in the DIP Facility Orders;

WHEREAS, the Borrowers have been unable to obtain funds or credit on better terms than those proposed by Lender; and

WHEREAS, in connection with the proposed loans and Advances, Borrowers filed that certain *Palm Terrace Debtors’ Motion (I) For Interim and Final Orders (A) Authorizing and Approving Debtor-in-Possession Financing; (B) Granting Security Interests and Superpriority Claims Pursuant to Sections 364(c) and (d) and 507 of the Bankruptcy Code and Bankruptcy Rule 4001(c); and (C) Modifying the Automatic Stay; and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* (the “**Motion**”); and

WHEREAS, pursuant to the Motion, the Bankruptcy Court entered the Interim Order on September 16, 2014, which Interim Order sets forth the basic terms of the loans and advances in that certain Term Sheet For Debtor-In-Possession Financing (“**Term Sheet**”) (the “**Term Sheet**”); and

WHEREAS, this Agreement is the DIP Credit Agreement contemplated by the Term Sheet.

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

**1. ACCOUNTING AND OTHER TERMS**

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP consistently applied. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the UCC to the extent such terms are defined therein.

**2. DIP FACILITY AND TERMS OF PAYMENT**

**2.1. Promise to Pay.** Borrowers hereby unconditionally promise to pay Lender the DIP Obligations, including the outstanding principal amount of all Advances, accrued and unpaid interest and fees thereon, costs and expenses, and Bankruptcy Fees as and when due in accordance with this Agreement.

**2.1.1. Advances.**

(a) Availability. Subject to the terms and conditions of this Agreement, Lender will make Advances to Borrowers up to the Availability Amount as follows: (i) upon entry of the Interim Order, (a) in the aggregate amount not to exceed \$600,000, (b) such additional amount as may be agreed to by the Lender in writing, or (c) such other sum as is approved by the Bankruptcy Court on an interim basis with the written consent of the Lender (the greater of (a), (b), and (c) being the “**Interim Borrowing Advances**”); and (ii) upon entry of the Final Order, (a) in the aggregate amount not to exceed \$2,400,000.00, (b) such additional amount as may be agreed to by the Lender in writing, or (c) such other sum as is approved by the Bankruptcy Court with the written consent of the Lender on a final basis (the greater of (a), (b), and (c) being the “**Final Borrowing Advances**”).

The Lender shall have no obligation to make an Advance to the extent that after giving effect to the requested Advance the outstanding principal balance of the DIP Facility exceeds (i) the amount set forth in the DIP Budget for the date on which such Advance is to be made or (ii) the Maximum Loan Amount, in accordance with the DIP Budget.

The DIP Facility is not a revolving loan, and any Advances made by Lender shall reduce the remaining amount available for Interim Borrowing Advances and Final Borrowing Advances, as applicable, by the amount of such Advances.

(b) Termination; Repayment. The DIP Facility and all obligations of the Lender to make Advances shall terminate on the Termination Date, at which time the principal amount of all Advances, the unpaid interest thereon, and all other DIP Obligations relating to the DIP Facility shall be immediately due and payable. In addition, Lender shall not have any obligation to, but may in its sole discretion, advance or continue advancing any Advances during the Default Notice/Cure Period.

(c) Joint and Several Liability. The DIP Obligations of the Borrowers under this Agreement shall be joint and several. To the extent any Debtor is required to repay an amount disproportionate to funds it obtains through the DIP Facility, it shall be entitled to a super-priority claim against the other Borrowers under 11 U.S.C. § 364(c)(1), which claim is junior in all respects to the Superpriority Claim of Lender.

**2.1.2. Termination or Reduction of the DIP Facility by the Borrowers.** Except as otherwise provided herein, the Borrowers may prepay the Advances in whole at any time or from time to time in part. The Borrowers may terminate the DIP Facility or reduce the DIP Facility at any time upon at least one (1) Business Day advance written notice prior to the Termination Date. If the Borrowers terminate the DIP Facility, all DIP Obligations shall be immediately due and payable.

**2.1.3. Application of Proceeds from Asset Sales.**

The net cash proceeds of any permitted asset sales (other than ordinary course of business sales of goods and services) shall be placed in a segregated account for the benefit of the Lender, to be distributed in accordance with orders of the Bankruptcy Court, following notice and a hearing.

**2.2. Payment of Interest on the Advances.**

(a) Interest Rate. Subject to Section 2.2(b), the principal amount outstanding under the DIP Facility shall bear interest at the interest rate of Four and One Half Percent (4.5%) per annum.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, all Advances shall bear interest at a rate per annum which is two percentage points (2%) above the rate in effect immediately before the Event of Default (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this Section 2.2(b) is not a permitted alternative to timely payment, shall not be considered compensation for any Event of Default, and shall not constitute a waiver of any Event of Default or otherwise prejudice, prevent or limit the exercise of any rights or remedies of Lender.

(c) 360-Day Year. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

(d) Payment; Interest Computation; Float Charge. Interest on Advances shall be payable to the Lender monthly in arrears, in cash, on the last calendar day of each month. Interest on Advances made by the Lender shall accrue and be added to principal on a monthly basis and be payable to the Lender upon the first to occur of (i) the effective date of a Plan of Reorganization, (ii) an Event of Default or (iii) the Maturity Date. In computing interest on the DIP Facility, all Payments received after 2:00 p.m. Eastern time on any day shall be deemed received on the next Business Day.

**2.3. Fees and Expenses.** Borrowers shall pay the Bankruptcy Fees; provided, however, that in no event shall any Bankruptcy Fees be payable by Borrowers until the same are properly payable in accordance with the provisions of the Term Sheet and the applicable DIP Facility Orders.

**2.4. Use of Proceeds.** The Borrowers shall use the proceeds of Advances, subject to the DIP Budget, solely to pay:

- (i) payroll and related expenses approved by Lender in its reasonable discretion and by the Bankruptcy Court;
- (ii) deposits to utilities approved by Lender in its reasonable discretion and by the Bankruptcy Court
- (iii) critical vendors approved by Lender in its reasonable discretion and by the Bankruptcy Court;
- (iv) working capital reasonable and necessary for operation of the Borrowers' business and preservation and enhancement of the Collateral and meeting the Borrowers' obligations and responsibilities under Bankruptcy Court orders and contracts;
- (v) amounts necessary to cure executory contracts assumed with the written consent of Lender;
- (vi) with respect to Final Borrowing Advances only, payment of the PacWest Loan;
- (vii) the Carve-Out;
- (viii) principal, interest and fees on the DIP Facility;
- (ix) payment of Bankruptcy Fees; and
- (x) subject to the limitations set forth in this Agreement and the DIP Facility Orders, expenses of the administration of the Chapter 11 Cases (including the payment of professional fees and costs, and United States Trustee fees).

No portion of the DIP Facility, any Advance and the Collateral, including the cash collateral, or the Carve-Out shall be used to (A) challenge, object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under this Agreement and the DIP Loan Documents or the liens or claims granted under DIP Facility Orders or the DIP Loan Documents, (B) pursue through investigation, assertion, motion, complaint or otherwise any other claims or causes of action against the Lender in connection with or related to the DIP Facility, the DIP Obligations, the DIP Loan Agreements and/or the DIP Facility Orders and/or the transactions contemplated thereby, including, without limitation, any appeal of the DIP Facility Orders; (C) pursue through motion, complaint or otherwise any litigation against the Lender or its owners, members, managers, officers, directors, employees, agents, attorneys, advisors, representatives, controlling persons, subsidiaries, successors, and assigns; or (D) seek to modify any of the rights granted to the Lender under this Agreement, the DIP Loan Documents, the DIP Facility Orders or related documents without Lender's express written consent, which may be withheld in Lender's sole discretion

### **3. CONDITIONS OF DIP FACILITY**

**3.1. Conditions Precedent to Interim Borrowing Advances.** The Lender's obligation to make the Interim Borrowing Advances shall be subject to the condition precedent that the Interim Order, in form and substance acceptable to Lender (including terms set forth in the Term Sheet unless modified with the written consent of Lender), shall have been effective as of September 8, 2014, and the Lender shall have received a certified copy of such Interim Order, and such Interim Order shall be in full force and effect and shall not have been reversed, modified, amended, subject to a pending appeal, stayed or vacated absent the prior written consent of Lender and Borrowers.

**3.2. Conditions Precedent to Final Borrowing Advances.** The Lender's obligation to make the Final Borrowing Advances shall be subject to the condition precedent that the Final Order, in form and substance acceptable to Lender (including terms set forth in the Term Sheet unless modified with the written consent of Lender), shall have been entered by the Bankruptcy Court no later than October 8, 2014, (i) authorizing and approving the DIP Facility and the transactions contemplated hereby and by the Interim Order or Final Order, as applicable, including, without limitation, the granting of the super-priority status, security interests and liens as contemplated by the Motion and the Term Sheet, and the payment of all fees, referred to herein, (ii) approving the payment by Borrowers of all of the Bankruptcy Fees; (iii) authorizing the lifting of the automatic stay to permit the Lender to exercise its rights and remedies with respect to the DIP Facility upon the occurrence of an Event of Default; and (iv) the Lender shall have received a certified copy of such Final Order, and such Final Order shall be in full force and effect and shall not have been reversed, modified, amended, subject to a pending appeal, stayed or vacated absent the prior written consent of Lender and Borrowers.

**3.3. Conditions Precedent to Closing and all Advances.** The following conditions precedent to the occurrence of the Closing Date and the making of each Advance thereafter shall be satisfied failing which Lender shall have no obligations to make any Advances (unless waived in writing by Lender):

(a) Certified copies of all documents evidencing any necessary corporate (or other similar) action, consents and governmental approvals (if any) required for the execution, delivery and performance by Borrowers of the DIP Loan Documents;

(b) A certificate of an Authorized Representative of each Borrower as of the date hereof certifying the names of the officer or officers of such entity authorized to sign the DIP Loan Documents to which such entity is a party, together with a sample of the true signature of each such officer (it being understood that Lender may conclusively rely on each such certificate until formally advised by a like certificate of any changes therein);

(c) On or before the Effective Date, Lender shall have received, reviewed and approved in writing a DIP Budget, in form and substance satisfactory to the Lender for the then applicable time period. The DIP Budget will be in the form of DIP Budget annexed hereto as **Exhibit A**, with such modifications (if any) as are agreed to by the Borrowers and Lender;

(d) There shall exist no action, suit, investigation, litigation or proceeding (other than the Chapter 11 Cases) pending or threatened in any court or before any arbitrator or governmental instrumentality that (i) could reasonably be expected to result in a Material

Adverse Change or (ii) restrains, prevents or imposes or can reasonably be expected to impose materially adverse conditions upon the DIP Facility or the transactions contemplated thereby;

(e) All necessary governmental and third party consents and approvals necessary in connection with the DIP Facility and the transactions contemplated hereby shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to the Lender) and shall remain in effect; and no law or regulation shall be applicable, in the judgment of the Lender, that restrains, prevents or imposes materially adverse conditions upon the DIP Facility or the transactions contemplated hereby;

(f) Nothing contained in any information disclosed to the Lender by the Borrowers after the date hereof shall lead the Lender to determine that, and the Lender shall not have become aware of any fact or condition not disclosed to them prior to the date hereof which shall lead the Lender to determine that, the Borrowers' condition (financial or otherwise), operations, performance, properties or prospects are different in any material adverse respect from that disclosed to the Lender prior to the date hereof;

(g) The Lender shall have received confirmation of sufficient insurance coverage for all property of Borrowers, general liability insurance and other forms of insurance in amounts with deductibles reasonably satisfactory to the Lender. The Lender shall have received endorsements naming the Lender as an additional insured and loss payee under all insurance policies to be maintained;

(h) The representations and warranties in Section 5 shall be true in all material respects on the Funding Date of each Advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Default or Event of Default shall have occurred and be continuing or shall result from the Advance. Each Advance is Borrowers' representation and warranty on that date that the representations and warranties in Section 5 remain true in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(i) Borrowers are in full compliance with all affirmative covenants under Section 6;

(j) Borrowers are not in violation of any negative covenants under Section 7;

(k) The making of any Advance shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently;

(l) In Lender's reasonable discretion, since the date of this Agreement and up to and including the date of the Advance, there has not been a Material Adverse Change;

(m) The Borrowers shall have authority for the continued use of cash collateral on such terms acceptable to Lender in its sole discretion;

(n) All outstanding Bankruptcy Fees have been paid; provided, however, that in no event shall any Bankruptcy Fees be payable by Borrowers until the same are properly payable in accordance with the provisions of the Term Sheet and the DIP Facility Orders;

(o) The Borrowers shall have executed and delivered to Lender any and all documents in respect of the DIP Facility, including without limitation any and all DIP Loan Documents theretofore requested by Lender, which documentation shall be reasonably satisfactory to the Lender;

(p) The Lender has received confirmation satisfactory to Lender in its sole discretion that the total amount of necessary payroll obligations, critical vendor payments, executory contract cures, utility deposits and any other amounts to be funded by the applicable Advance does not exceed the amounts set forth with respect thereto in the applicable DIP Budget;

(q) Lender, Borrowers and Borrowers' depository bank(s) shall have executed a Control Agreement satisfactory to Lender;

(r) Lender shall be satisfied that there are no material defaults in any of Borrowers' post-petition obligations under any contract required for the operation of Borrowers' business;

(s) There shall have occurred no Event of Default.

(t) In connection with the payoff of the PacWest Loan under the Final Borrowing Advances, the Lender has received evidence satisfactory to the Lender in its sole discretion, that any and all obligations of the Borrowers to PacWest have been paid in full (including any and all pre- and post-petition claims, administrative claims or superpriority claims), and any and all Liens securing the PacWest Loan shall have been fully extinguished or released (or, at the option of the Lender, may be assigned to Lender and further secure the repayment of the DIP Obligations);

**3.4. Covenant to Deliver.** Borrowers agree to deliver to Lender each item required to be delivered to Lender under this Agreement as a condition to any Advance. Borrowers expressly agree that the extension of an Advance prior to the receipt by Lender of any such item shall not constitute a waiver by Lender of Borrowers' obligation to deliver such item, and any such extension in the absence of a required item shall be in Lender's reasonable discretion.

**3.5. Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrowers shall notify Lender (which notice shall be irrevocable), by delivering to it a Borrowing Request by courier, electronic mail or facsimile not later than 12:00 p.m. Eastern Standard time on the Business Day that is at least three (3) Business Days prior to the proposed Funding Date of the applicable Advance unless otherwise agreed to by Lender. The Borrowers shall not deliver a Borrowing Request more frequently than once weekly unless the Lender otherwise agrees. Subsequent to making the initial Advance, additional Advances by the Lender may be funded in multiples of \$10,000.

#### **4. CREATION OF SECURITY INTEREST**

##### **4.1. Grant of Security Interest.**

(a) Advances. To secure the DIP Obligations of the Borrowers, including the Interim Borrowing Advances and the Final Borrowing Advances, Lender shall have a fully perfected security interest (“Final Borrowing Lien”) in the Collateral, and all rights, claims, and other causes of action of such Borrowers’ estates (including any actions asserted by any Debtor or any subsequently appointed trustees or representatives of that Debtor’s estate under any section of the Bankruptcy Code), and in each case, all proceeds resulting therefrom, except that avoidance actions under sections 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code are excluded. Borrowers represent, warrant, and covenant that the security interest granted herein is and shall at all times be a perfected security interest in the Collateral.

The Final Borrowing Lien shall (A) pursuant to Section 364(c)(2) of the Bankruptcy Code, be a perfected first priority senior lien on the property of the Borrowers’ estates that is not otherwise subject to any lien, subject only to the Carve-Out; and (B) pursuant to Section 364(d)(1) of the Bankruptcy Code, be a perfected first priority senior lien on the Collateral that is presently subject to any valid, unavoidable and enforceable pre-petition security interests granted in the Collateral, subject only to the Carve-Out.

(b) Carve-Out. Upon an Event of Default (or an event for which notice of default has been given and which with the lapse of time would constitute an Event of Default), the Lender’s liens on the Collateral and the Lender’s administrative claims provided for herein shall be subject to a carve out (the “Carve-Out”) in an amount not to exceed (i) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the clerk of the Bankruptcy Court that are due upon the occurrence of an Event of Default; (ii) fees and expenses due to professionals employed by the Borrowers, for services rendered as Borrowers and/or Chapter 11 debtors in possession that are due upon the occurrence of an Event of Default in an amount not to exceed \$100,000.00; and (iii) fees and expenses to professionals employed by the Committee for services rendered while the Borrowers are Chapter 11 debtors in possession that are due upon the occurrence of an Event of Default in an amount not to exceed \$25,000.00.

Fees and expenses within the DIP Budget and allowed and paid to professionals on an interim or final basis and other payments made pursuant to the then applicable DIP Budget shall not be subject to disgorgement for the benefit of the Lender. Notwithstanding the foregoing, no portion of the Carve-Out, and no portion of any amounts approved for payment prior to an Event of Default, are to be utilized for the payment of professional fees, disbursements, costs or expenses of any party, under 11 U.S.C. §§ 326-331, 503(b)(3) or otherwise, in connection with:

- (i) the investigation or assertion of any claims or causes of action against the Lender with respect to the DIP Facility, or the DIP Obligations, or
- (ii) any litigation against Lender or its owners, members, managers, officers, directors, employees, agents, attorneys, advisors, representatives, controlling persons, subsidiaries, successors, and assigns in connection with any other claim or cause of action;

In partial consideration of the Carve-Out, Borrowers on behalf of themselves and their bankruptcy estates waive (1) any right or claim to surcharge the Lender, the DIP Facility or Collateral pursuant to 11 U.S.C. § 506(c) or otherwise and (2) the “equities of the case” exception in Section 552(b) of the Bankruptcy Code.

(c) No Recovery of Payments Made Under DIP Budget. The security interests granted herein may not be used as a basis to recover any payments made pursuant to the DIP Budget in the ordinary course of business or pursuant to any negative variance in the DIP Budget authorized by the Lender in accordance with the terms of this Agreement.

(d) Release of Liens. Upon payment in full of the DIP Obligations and at such time as Lender’s obligation to make Advances has terminated, Lender shall release and terminate its liens and security interests in the Collateral and all rights therein shall revert to Borrowers.

#### **4.2. Superpriority Administrative Claim.**

In addition to the Interim Borrowing Liens and Final Borrowing Liens granted pursuant to section 364(c)(2), section 364(c)(3), and section 364(d)(1) of the Bankruptcy Code, the Lender shall also receive and be entitled, pursuant to Section 364(c)(1) of the Bankruptcy Code, to a super-priority administrative expense claim in the amount of all DIP Obligations (the “**Superpriority Claim**”) with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out (defined below). The Superpriority Claims to be granted to the Lender under this Agreement, the DIP Loan Documents and the DIP Facility Orders may not be the basis to avoid or recover any payments made for legitimate obligations of the Borrowers pursuant to the then applicable DIP Budget (and the unfavorable 12% variance) in the ordinary course of business.

**4.3. Automatic Perfection.** All the above-described pledges, security interests and mortgages, including the Interim Borrowing Liens and the Final Borrowing Liens, securing the DIP Obligations, including the Advances, shall be deemed created and fully perfected and effective upon entry of any DIP Facility Order, without the need for any additional documentation. If Lender requests, Borrowers shall cooperate with Lender to execute and record further documentation on terms, and pursuant to documentation, satisfactory to the Lender, and, subject to customary and limited exceptions to be agreed upon.

**4.4. Authorization to File Financing Statements.** Borrowers hereby authorize Lender to file financing statements, without notice to Borrowers, with all appropriate jurisdictions to perfect or protect Lender’s interest or rights hereunder, including a notice that any disposition of the Collateral (other than in accordance with this Agreement), by either Borrowers or any other Person, shall be deemed to violate the rights of Lender under the UCC. Without limiting the foregoing, Borrowers hereby authorize Lender to file financing statements which describe the Collateral as “all assets” and/or “all personal property” of Borrowers or words of similar import.

### **5. REPRESENTATIONS AND WARRANTIES**

Each Borrower represents and warrants as follows:

**5.1. Existence and Power; Name; Chief Executive Office; Inventory and Equipment Locations; Federal Employer Identification Number and Organizational Identification Number.** Each Borrower is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly licensed or qualified to transact business in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary. Except for the approval of the Bankruptcy Court, each Borrower has all requisite power and authority to conduct its business, to own its properties and to execute and deliver, and to perform all of its obligations under, the Term Sheet, the DIP Facility Orders and DIP Loan Documents, and all of the foregoing are binding and enforceable. Without limiting the foregoing, the Borrowers have the corporate power and authority to grant the security interests in the Collateral. During its existence for the last five (5) years prior to the Petition Date, each Borrower has done business solely under the names set forth in Schedule 5.1. The Borrowers' chief executive office and principal place of business is located at the address set forth in Schedule 5.1, and all of the Borrowers' records relating to its business or the Collateral are kept at the address set forth in Schedule 5.1.

**5.2. Pre-Petition Lender Rights Superseded.** Any covenants against borrowing in any loan documentation in favor of pre-petition lenders are superseded by any DIP Facility Order.

**5.3. Authorization of Borrowing; No Conflict as to Law or Agreements.** The execution, delivery and performance by each Borrower of the DIP Loan Documents and the borrowings from time to time hereunder have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of any of the Borrowers' owners; (ii) other than the entry of DIP Facility Orders, require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained, accomplished or given prior to the date hereof; (iii) violate any provision of any law, rule or regulation (including Regulation X of the Board of Governors of the Federal Reserve System) or of any order, writ, injunction or decree presently in effect having applicability to any of the Borrowers or of the Borrowers' Constituent Documents; (iv) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Borrowers are parties or by which they or their properties may be bound or affected; or (v) result in, or require, the creation or imposition of any Lien (other than the security interests granted hereunder) upon or with respect to any of the properties now owned or hereafter acquired by the Borrowers.

**5.4. Legal Agreements.** This Agreement constitutes and, upon due execution by each of the Borrowers, the other DIP Loan Documents will constitute the legal, valid and binding obligations of each Borrower, enforceable against each Borrower in accordance with their respective terms.

**5.5. Subsidiaries.** Except as set forth in Schedule 5.5 hereto, the Borrowers have no Subsidiaries.

**5.6. DIP Budget.** Borrowers have furnished the DIP Budget to the Lender. The Budget has been prepared on a reasonable basis and in good faith by the Borrowers, and is based

on assumptions believed by the Borrowers to be reasonable. The Borrowers are not be aware of any facts or information that would lead them to believe that the DIP Budget is incorrect or misleading in any material respect.

**5.7. Litigation.** Except as set forth in Schedule 5.7 hereto, there are no actions, suits or proceedings pending or, to the Borrowers' knowledge, threatened against or affecting any of the Borrowers or the properties of the Borrowers and their management before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Borrowers, would result in a final judgment or judgments against the Borrowers that would cause a Material Adverse Change.

**5.8. Regulations T, U and X.** None of the Borrowers is engaged in the business of extending credit for the purpose of purchasing or carrying any "margin stock" or "margin security (within the meaning of Regulations T, U or X issued by the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Advance will be used to purchase or carry any margin stock or margin security or to extend credit to others for the purpose of purchasing or carrying any margin stock or margin security.

**5.9. Taxes.** Each Borrower has paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by each of them. Each Borrower has filed all federal, state and local tax returns which to the knowledge of the Officers of the Borrowers, as the case may be, are required to be filed, and each Borrower has paid or caused to be paid to the respective taxing authorities all taxes as shown on said returns or on any assessment received by any of them to the extent such taxes have become due.

**5.10. Title and Liens.** The Borrowers have good and absolute title to all Collateral free and clear of all Liens other than Permitted Liens. No financing statement naming a Borrower as debtor is on file in any office except to perfect Permitted Liens.

**5.11. Default.** Except as set forth on Schedule 5.12, each Borrower is in compliance with all provisions of all agreements, instruments, decrees and orders to which it is a party or by which it or its property is bound or affected, the breach or default of which could have a Material Adverse Change as to such Borrower.

**5.12. Submissions to Lender.** All financial and other information provided to the Lender by or on behalf of the Borrowers in connection with the Borrowers' request for the DIP Facility (i) is true and correct in all material respects, (ii) does not omit any material fact necessary to make such information not misleading and, (iii) as to projections, valuations or proforma financial statements, present a good faith opinion as to such projections, valuations and proforma condition and results.

**5.13. Financing Statements.** The Borrowers have authorized the filing of financing statements sufficient when filed to perfect the security interest granted hereunder and the other security interests created by the DIP Loan Documents. Upon the entry of the Interim Order, the Lender will have a valid and perfected security interest in all Collateral which is capable of being perfected by filing financing statements. None of the Collateral is or will become a fixture on real estate.

**5.14. Rights to Payment.** Each right to payment and each instrument, document, chattel paper and other agreement constituting or evidencing Collateral is (or, in the case of all future Collateral, will be when arising or issued) the valid, genuine and legally enforceable obligation, subject to no defense, setoff or counterclaim (other than in the ordinary course of business or as reserved on the Borrowers' books and records), of the account Borrowers or other obligor named therein or in the Borrowers' records pertaining thereto as being obligated to pay such obligation.

**5.15. Administrative Priority; Lien Priority.**

(a) The DIP Obligations of the Borrowers will, at all times after the Effective Date, constitute allowed superpriority administrative expenses in the Chapter 11 Cases, having priority in payment over all other costs and expenses claims against the Borrowers now existing or hereafter arising, of any kind or nature whatsoever, including without limitation all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to (i) the Carve-Out, and (ii) prior to the entry of the Final Order, any superpriority administrative claims in favor of PacWest (to the extent allowed by the Bankruptcy Court) solely as adequate protection for the Borrowers' use of Cash Collateral of PacWest.

(b) Pursuant to Section 364(d)(1) of the Bankruptcy Code, the Interim Order and the Final Order, all DIP Obligations will be secured as set forth in Section 4.1;

(c) On the Effective Date and upon entry of the Interim Order and the Final Order, the Interim Order and the Final Order shall be, in full force and effect and have not been reversed, vacated, modified, amended or stayed, except for modifications and amendments that are reasonably acceptable to the Lender and are not subject to a pending appeal or stayed in any respect.

**5.16. Appointment of Examiner; Liquidation.** No order has been entered or is pending in the Chapter 11 Cases (i) for the appointment of an examiner with enlarged powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Sections 1104(d) and 1106(b) of the Bankruptcy Code or (ii) to convert the Chapter 11 Cases to Chapter 7 cases or to dismiss the Chapter 11 Cases.

**5.17. Investment Company Act.** None of Borrowers is required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

**5.18. Compliance with Laws.** Each Borrower (i) is in compliance with all laws, statutes, rules, regulations, ordinances and tariffs of any governmental authority applicable to Borrowers and Borrowers' business, assets or operations, including, without limitation, environmental, ERISA and healthcare laws, and (ii) is not in violation of any order of any governmental authority or other board or tribunal, except in the case of subclauses (i) and (ii) above where noncompliance or violation could not reasonably be expected to result in a Material Adverse Change. There is no event, fact, condition or circumstance which, with notice or passage of time, or both, would constitute or result in any noncompliance with, or any violation of, any of the foregoing in each case except where noncompliance or violation could not

reasonably be expected to result in a Material Adverse Change. None of Borrowers has received any notice from any governmental authority that such governmental authority has imposed or intends to impose any enforcement actions, fines or penalties for any failure or alleged failure to comply with environmental, ERISA, HIPAA laws or implementing regulations. Borrowers have not received any notice that Borrowers are not in compliance in any respect with any of the requirements of any of the foregoing. Borrowers have been and are currently in compliance, and are presently taking and will continue to take all actions necessary to assure that they shall, on or before each applicable compliance date and continuously thereafter, comply with HIPAA, except where the failure to comply could not reasonably be expected to result in a Material Adverse Change. Borrowers have maintained in all material respects all records required to be maintained by the Food and Drug Administration, Drug Enforcement Agency and State Boards of Pharmacy and the federal and state Medicare and Medicaid programs as required by the Healthcare Laws and, to the best knowledge of Borrowers, there are no presently existing circumstances which likely would result in material violation of the Healthcare Laws.

#### **5.19. OFAC and Anti-Terrorism Regulations.**

(a) None of Borrowers nor any of Borrowers' Subsidiaries: (i) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or its otherwise associated with any such Person in any manner violative of Section 2 of such executive order, or (iii) is a Person on the list of Specialty Designated nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Advances will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(c) Borrowers acknowledge by executing this Agreement that Lender has notified the Borrowers that, pursuant to the requirements of the Patriot Act, Lender is required to obtain, verify and record such information as may be necessary to identify the Borrowers (including, without limitation, the name and address of Borrower) in accordance with the Patriot Act.

**5.20. The Chapter 11 Cases.** The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and have not been dismissed as of the date of this Agreement. The motion for approval of this Agreement was proper and sufficient pursuant to the Bankruptcy Code, the Bankruptcy Rules and the rules and procedures of the Bankruptcy Court.

## 6. AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees that until payment in full of all DIP Obligations, each Borrower shall perform all of the following covenants:

**6.1. Government Compliance.** Except as permitted by Section 7.2, maintain their legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Change. Borrowers shall comply, with all laws, ordinances and regulations to which they are subject, the noncompliance with which could have a Material Adverse Change.

**6.2. Plan Confirmation.** Borrowers shall use their best efforts to cause a Plan of Reorganization to be confirmed in a timely manner.

### **6.3. Financial Statements, Reports, Certificates.**

(a) Borrowers shall provide Lender with the following:

(i) within two (2) Business Days after the end of each week, a reconciliation, in form and substance consistent with Borrowers' practices prior to the Petition Date, or as otherwise acceptable to the Lender in its reasonable discretion, and substantially consistent with the DIP Budget, showing (i) actual collections and disbursements, on a weekly and cumulative basis through the end of the prior week, and (ii) a comparison to the same periods in the DIP Budget;

(ii) within thirty (30) days after the end of each month, (A) monthly accounts receivable agings, aged by invoice date, (B) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (C) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports, deferred revenue report and general ledger;

(iii) within thirty (30) days after the end of each month, the management monthly operational report for such month;

(iv) as soon as available, and in any event within thirty (30) days after the end of each month, monthly unaudited financial statements and operating reports, budgets and operating plans for the preceding month prepared on a consolidated basis

(v) as soon as available, and in any event within thirty (30) days after the end of each quarter, quarterly unaudited financial statements and operating reports, budgets and operating plans for the preceding quarter, prepared on a consolidated basis;

(vi) within thirty (30) days after the end of each month a monthly Compliance Certificate signed by a Responsible Officer, (A) setting forth a schedule of all checks and other disbursements and (B) certifying that as of the end of such month, Borrowers were in full compliance with all of the terms and

conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Lender shall reasonably requests, including, without limitation, a statement that at the end of such month there were no held checks;

(vii) within thirty (30) days after the end of each month, an analysis of all capital expenditures for such month;

(viii) prompt written notice of significant changes to material contracts with customers, suppliers, contractors, utility providers, governmental authorities, merchant builders and any material contract, including new material contracts and contract renewals or cancellation or reduction of any existing customer agreements;

(ix) within thirty (30) days prior to the end of each fiscal year of Borrowers, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrowers, and (B) annual financial projections for the following fiscal year (on a quarterly basis) as approved by Borrowers' board of directors, together with any related business forecasts used in the preparation of such annual financial projections;

(x) as soon as available, and in any event within one hundred eighty (180) days following the end of Borrowers' fiscal year, annual financial statements certified by an independent certified public accountants reasonably acceptable to Lender;

(xi) notice of any significant changes to any labor agreements;

(xii) notice of any changes in management;

(xiii) copies of all reports provided to PacWest in connection with the PacWest Loan and the PacWest Loan Agreement, which said copies shall be provided to Lender substantially contemporaneously with Borrowers' transmittal to PacWest; and

(xiv) on an as-requested basis, all other information reasonably requested by the Lender.

(b) In the event that Borrowers are or become subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days after filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission or a link thereto on Borrowers' or another website on the Internet.

(c) Prompt written notice of the occurrence of any Default or Event of Default and the action(s) the Borrowers propose to take to remedy such Default or Event of Default.

#### **6.4. Financial Covenants; Compliance with DIP Budget.**

(a) Borrowers shall at all times comply with the DIP Budget on a line-item by line-item basis provided, however, that the Borrowers shall be entitled to deviate from the DIP Budget without prior approval of the Lender, notice to other parties secured by the Collateral, or any official committee of unsecured creditors, or order of the Bankruptcy Court, provided that all reasonable and necessary expenditures to maintain the Collateral are made and that any expense variances do not exceed an unfavorable twelve percent (12%) as to any existing or newly-included line item, without prior approval of the Lender. Budgeted amounts for expenditures not made in a particular weekly period may be rolled forward and made in a future period in that particular DIP Budget only, but not any subsequent DIP Budget for a later period. Notwithstanding the foregoing, in the event that Lender agrees in writing to any deviation(s) from projections contained in the applicable DIP Budget that otherwise could constitute an Event of Default, the Lender may not thereafter use such deviation(s) as an Event of Default for purposes of termination of the DIP Facility or exercising any of their rights or remedies hereunder.

(b) Borrowers shall make only those disbursements approved by the Responsible Officer or authorized by Lender or the Bankruptcy Court, which disbursements shall be listed on a Disbursements Register certified by the Responsible Officer, provided that such Disbursements Register shall be submitted to Lender for review, but not approval, prior to the Borrowers making any disbursements listed therein.

#### **6.5. Accounts Receivable.**

(a) Schedules and Documents Relating to Accounts. Borrowers shall deliver to Lender transaction reports and schedules of collections, as provided in Section 6.3; provided, however, that Borrowers' failure to execute and deliver the same shall not affect or limit the Interim Borrowing Lien or Final Borrowing Lien and other rights in all of Borrowers' Accounts, nor shall Lender's failure to advance or lend against a specific Account affect or limit the Interim Borrowing Lien or Final Borrowing Lien and other rights therein. If reasonably requested by Lender, after the occurrence and during the continuance of an Event of Default, Borrowers shall furnish Lender with copies (or, at Lender's reasonable request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrowers shall deliver to Lender, on its reasonable request after the occurrence and during the continuance of an Event of Default, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary endorsements, and copies of all credit memos.

(b) Disputes. Borrowers shall promptly notify Lender of all disputes or claims relating to Accounts in excess of \$25,000 in the aggregate or that could reasonably be expected to have a material adverse effect on Borrowers' business. Borrowers shall not forgive (completely or partially), compromise, or settle any Account having a face amount in excess of the \$25,000 in the aggregate for less than payment in full, or agree to do any of the foregoing, without the Lender's prior written consent, except as to adjustments made in the ordinary course or as reflected on the Borrowers' books and records.

(c) Collection of Accounts. Borrowers shall have the right to collect all Accounts, unless and until a Default or an Event of Default has occurred and is continuing.

(d) Verification. Lender may, from time to time, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrowers or Lender or such other name as Lender may choose. Lender agrees that so long as no Event of Default has occurred and is continuing, Lender shall endeavor to provide Borrowers with notice of its intention to conduct verifications prior to conducting such verifications.

(e) No Liability. Lender shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Lender be deemed to be responsible for any of Borrowers' obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Lender from liability for its own gross negligence or willful misconduct.

**6.6. Remittance of Proceeds.** Deliver to Lender, in kind, all proceeds arising from the disposition of any Collateral in the original form in which received by Borrowers not later than one (1) Business Day after receipt by Borrowers, to be applied to the DIP Obligations pursuant to the terms of Sections 9.4 and 12.14 hereof. Nothing in this Section 6.6 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

**6.7. Taxes; Pensions.** Make timely payment of all foreign, federal, state and local taxes or assessments (except as otherwise provided in the definition of Permitted Lien), and shall deliver to Lender, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**6.8. Access to Collateral; Books and Records.** At all reasonable times Lender, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrowers' Books. The foregoing inspections and audits shall be at Borrowers' expense, and Borrowers shall pay reasonable charges, plus reasonable out-of-pocket expenses, of Lender in connection therewith.

**6.9. Insurance.** Keep their business and the Collateral insured for risks (including, without limitation, hazard, property and casualty and business interruption insurance) and in amounts standard for companies in Borrowers' industry and location and as Lender may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Lender, it being agreed that the insurance maintained by Borrowers as of the Effective Date is satisfactory. At Lender's reasonable request, Borrowers shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Lender's option, be payable to Lender on account of the DIP Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrowers shall have the option of applying the proceeds of any casualty policy up to \$10,000, in the aggregate, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the

replaced or repaired Collateral and (ii) shall be deemed Collateral in which Lender has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Lender, be payable to Lender on account of the DIP Obligations. If Borrowers fail to obtain insurance as required under this Section 6.9 or to pay any amount or furnish any required proof of payment to third persons and Lender, Lender may make all or part of such payment or obtain such insurance policies required in this Section 6.9, and take any action under the policies Lender deems prudent.

#### **6.10. Operating Accounts.**

(a) Maintain, primary domestic U.S. depository, operating accounts and securities accounts with any bank or financial institution; provided, however, that for each such operating account that Borrowers at any time maintain, Borrowers shall cause the applicable bank or financial institution at or with which any operating account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Interim Borrowing Lien or Final Borrowing Lien in such operating account in accordance with the terms hereunder.

(b) Provide Lender ten (10) Business Days' prior written notice before establishing any Collateral Account at or with any bank or financial institution other than its current bank or financial institution. In addition, for each Collateral Account that Borrowers at any time maintain, Borrowers shall cause the applicable bank or financial institution at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Interim Borrowing Lien or Final Borrowing Lien in such Collateral Account in accordance with the terms hereunder. The provisions of the previous sentence shall not apply to deposit accounts (i) exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Lender by Borrowers as such, and (ii) to deposit accounts to the extent the aggregate average daily balance held in all such accounts does not exceed \$10,000.

**6.11. Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, Borrowers shall make available to Lender during regular business hours and upon reasonable prior notice, without expense to Lender, Borrowers and their officers, employees and agents and Borrowers' books and records, to the extent that Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Lender with respect to any Collateral or relating to Borrowers.

**6.12. Chapter 11 Case Pleadings.** Promptly after filing or receipt thereof, Borrowers shall provide Lender with copies of all pleadings, motions, applications, judicial information, financial information and other papers and documents filed or received by the Borrowers in the Chapter 11 Cases, which papers and documents shall also be given or served on the Lender and the Lender's counsel. Service under this Section 6.12 by electronic mail shall be sufficient and proper service.

**6.13. Committee Reports.** Promptly after sending thereof, Borrowers shall provide Lender with copies of all written reports given by the Borrowers to any official or unofficial Committee in the Chapter 11 Cases, other than any such reports subject to privilege; provided

that the Borrowers may redact any confidential information contained in any such report if they provide to the Lender a summary of the nature of the information so redacted.

**6.14. Maintenance of Borrower's Books.** Borrowers shall: (i) maintain Borrowers' Books in accordance with commercially reasonable business practices in which true, correct and complete entries are made of all of its and their dealings and transactions in all material respects; and (ii) set up and maintain on their books such reserves as may be required by GAAP with respect to doubtful accounts and all taxes, assessments, charges, levies and claims and with respect to its business, and include such reserves in its quarterly as well as year end financial statements. At all times, Borrowers shall maintain an updated and complete set of Borrowers' Books relating to their Accounts, including pertinent account debtor contact information and account numbers at the following address: Four West Red Oak Lane, Suite 201, White Plains, New York 10604.

**6.15. Conduct of Business And Maintenance Of Assets.** Borrowers shall (i) conduct their business in accordance with good business practices; (ii) engage principally in the same or similar lines of business substantially as heretofore conducted; and (iii) maintain all of their material properties, assets and equipment used or useful in their business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of this Agreement or the DIP Loan Documents); and (iv) from time to time to make all necessary or desirable repairs, renewals and replacements thereof, as determined by Borrowers using commercially reasonable business judgment.

**6.16. Further Assurances.** Borrowers shall execute any further instruments and take further action as Lender reasonably requests to create, perfect or continue the Interim Borrowing Lien or Final Borrowing Lien in the Collateral or to effect the purposes of this Agreement.

**6.17. Notices.** Borrowers shall promptly provide to Lender information, including copies, pertaining to: (a) any notices of default or litigation asserted or instituted against any of Borrowers by any Person other than Lender; and (b) circumstances that could result in a Material Adverse Change.

**6.18. Changes in Management/Labor Agreements.** Borrowers shall promptly notify Lender of any changes to Borrowers' management and of any material changes to any labor agreements to which any of the Borrowers are a party.

## **7. NEGATIVE COVENANTS**

Each Borrower covenants and agrees that until payment in full of all DIP Obligations, each Borrower shall not perform any of the following without the Lender's prior written consent:

**7.1. Dispositions.** Convey, sell, lease, transfer or otherwise dispose of (collectively, "Transfer"), or make any agreement to Transfer, all or any part of their business or property, except for (a) Transfers of Inventory in the ordinary course of business; (b) Transfers of used, worn-out, obsolete or surplus Equipment; (c) dispositions of assets subject to any settlement or payment in respect of any property or casualty insurance claim or any condemnation proceeding; (d) any Transfer of all or substantially all of the assets of a Subsidiary except to the extent permitted by Section 7.3; (e) the abandonment of any intellectual property that, in the

commercially reasonable judgment of Borrowers, is uneconomical, negligible, obsolete or otherwise not material in the conduct of their business; (f) Transfers of property to the extent that (I) such property is exchanged for credit against the purchase price of similar replacement property or (II) the proceeds of such sale or other disposition are promptly applied to the purchase price or such replacement property; (g) Transfers of assets by any Subsidiary of Borrowers to Borrowers; or (h) Transfers that provide for full and indefeasible payment in full in cash on the effective date thereof of all amounts due under the DIP Facility.

**7.2. Changes in Business, Management, Ownership, Control, or Business Locations.** (a) Engage in any business other than the businesses currently engaged in by Borrowers or reasonably related thereto or reasonable extensions thereof; (b) liquidate or dissolve except as permitted pursuant to Section 7.3 below, or (c) (i) have a material change in management or (ii) permit or suffer any Change in Control. Borrowers shall not, without at least thirty (30) days prior written notice to Lender: (1) add any new offices or business locations, including warehouses (unless each such new office or business location contains less than \$100,000 in Borrowers' assets or property), (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3. Mergers or Acquisitions.** Merge or consolidate with any other Person, or acquire all or substantially all of the capital stock or property of another Person; provided, that any Subsidiary may merge or consolidate into Borrowers.

**7.4. Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5. Encumbrance.** Create, incur, or allow any Lien on any of their property, or assign or convey any right to receive income, including the sale of any Accounts, except for Permitted Liens, permit any Collateral not to be subject to the security interests granted herein to Lender, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Lender) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrowers from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrowers' intellectual property, in each case, except as is otherwise permitted in Section 7.1 hereof and in the definition of "Permitted Lien" herein.

**7.6. Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.10 hereof.

**7.7. Investments; Distributions.** (a) Directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so; or (b) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock.

**7.8. Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of a Borrower, except for transactions that are in the ordinary course of Borrowers' business, upon fair and reasonable terms that are no less favorable to Borrowers than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9. Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940 or undertake as one of its

important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Advance for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrowers' business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any Material Adverse Change, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**7.10. DIP Facility Orders; Administrative Priority; Lien Priority; Payment of Claims.** The Borrowers will not:

(a) at any time, seek, consent to or suffer to exist any reversal, modification, amendment, stay or vacation of the Interim Order or the Final Order, except for modifications and amendments agreed to in writing by the Lender;

(b) at any time, suffer to exist a priority for any administrative expense or unsecured claim against Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c) 726, 1114 and other provisions of the Bankruptcy Code) equal or superior to the priority of the Lender in respect of the DIP Obligations, except for (i) the Carve-Out and, and (ii) prior to the entry of the Final Order, any superpriority administrative claims in favor of PacWest (to the extent allowed by the Bankruptcy Court) solely as adequate protection for the Borrowers' use of Cash Collateral of PacWest;

(c) at any time, suffer to exist any Lien on the Collateral having a priority equal or superior to the Liens in favor of the Lender, except for the Carve-Out; and

(d) prior to the date on which all DIP Obligations have been fully paid and satisfied, the Borrowers shall not pay any administrative expense claims except (i) DIP Obligations due and payable hereunder and (ii) administrative expenses incurred in the ordinary course of the Borrowers' business as contemplated by this Agreement and the DIP Budget.

**7.11. Claims.** Use the Advances, the DIP Facility, or any cash collateral to assert claims against the Lender or its owners, members, managers, officers, directors, employees, agents, attorneys, advisors, representatives, controlling persons, subsidiaries, successors, and assigns.

## **8. EVENTS OF DEFAULT**

**8.1.** The occurrence of any of the following events, without notice or cure period (unless otherwise specified therein), shall immediately be an Event of Default under this Agreement and/or the DIP Loan Documents.

**8.1.1.** Default in the payment of any amount owed (including, without limitation, interest, Bankruptcy Fees, fees, or principal) by any of the Borrowers to the Lender as and when due after the Default Notice/Cure Period;

**8.1.2.** Any material breach of or failure to perform or comply with any material term of this Agreement or any of the DIP Loan Document by any of the Borrowers after the Default Notice/Cure Period;

**8.1.3.** The Borrowers' failure to perform or comply with any material terms or conditions of the DIP Facility Orders or any order authorizing use of cash collateral after the Default Notice/Cure Period;

**8.1.4.** The rendering against any of the Borrowers of an arbitration award, a final judgment, decree or order, in each case requiring the payment of money in excess of \$25,000 in the aggregate or a postpetition lien on any of the Collateral, and the continuance of such arbitration award, judgment, decree or order unsatisfied and in effect for any period of 30 consecutive days; provided, however, that this Section 8.1.4 shall not apply to unsecured claims;

**8.1.5.** The filing by any of the Borrowers of any motion or proceeding that could reasonably be expected to result in material impairment or Material Adverse Change of the Lender's rights under this Agreement, the Term Sheet, the DIP Loan Documents or the DIP Facility Orders, including without limitation any motion to surcharge the Lender, the DIP Facility or the Collateral under 11 U.S.C. § 506(c) or otherwise after the Default Notice/Cure Period;

**8.1.6.** The filing of a motion by any of the Borrowers for entry of an order staying or otherwise prohibiting the prosecution of any enforcement action or any motion or pleading seeking to challenge the Interim Borrowing Lien or Final Borrowing Lien or otherwise commencing any cause of action against the Lender;

**8.1.7.** Any of the Borrowers (except following the Lender's prior written request or with the Lender's express prior written consent) shall file a motion with the Bankruptcy Court or any other court with jurisdiction in the matter seeking an order, or an order is otherwise entered, reversing, vacating, modifying, revoking, staying, rescinding, or amending any of the DIP Facility Orders or any of the DIP Loan Documents, without the Lender's express prior written consent (and no such consent shall be implied from any other action, inaction, or acquiescence of the Lender);

**8.1.8.** The Interim Order has not become effective on or before September 8, 2014 or the Final Order has not been entered by the Bankruptcy Court on or before October 8, 2014;

**8.1.9.** Any of the Borrowers shall file any motion or application, or the Bankruptcy Court allows the motion or application of any other Person, which seeks approval for or allowance of any claim, lien, security interest ranking equal or senior in priority to the claims, liens and security interests granted to the Lender under the DIP Facility Orders or the DIP Loan Documents or any such equal or prior claim, lien, or

security interest shall be established in any manner, except, in any case, as expressly permitted under the DIP Facility Orders;

**8.1.10.** The DIP Facility Orders shall cease to be in full force and effect at any time after the date of entry thereof by the Bankruptcy Court;

**8.1.11.** The occurrence of any Default or Event of Default pursuant to the terms of the DIP Facility Orders, including without limitation the Term Sheet incorporated therein;

**8.1.12.** Conversion of any of the Chapter 11 Cases to Chapter 7 cases under the Bankruptcy Code, or dismissal of any of the Chapter 11 Cases or any subsequent Chapter 7 cases either voluntarily or involuntarily;

**8.1.13.** Either of the DIP Facility Orders shall be modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal without the prior written consent of Lender (and no such consent shall be implied from any other authorization or acquiescence by Lender), or either of the DIP Facility Orders shall otherwise cease to be in full force and effect;

**8.1.14.** Entry of an order in any of the Chapter 11 Cases: (i) appointing an examiner with powers to take any action other than investigate and report; or (ii) appointing a Chapter 11 trustee;

**8.1.15.** Expiration or termination of any of the Borrowers' exclusive periods to file and confirm a Plan of Reorganization;

**8.1.16.** Entry of an order granting any other super-priority claim or lien equal or superior to that granted to the Lender prior to full and indefeasible repayment of the DIP Obligations other than as specifically authorized herein or in the Term Sheet or DIP Facility Orders;

**8.1.17.** The filing of a Plan of Reorganization by any Person that does not propose to indefeasibly pay in full in cash on the effective date thereof all DIP Obligations owed to the Lender;

**8.1.18.** Default in the performance, or breach, of any material term, covenant warranty or agreement of any of the Borrowers contained in this Agreement, the Term Sheet, any of the DIP Loan Documents, any term or condition of either of the DIP Facility Orders collateral after the Default Notice/Cure Period;

**8.1.19.** Any Borrower shall fail to comply in any material respect with the DIP Budget (after accounting permitted line-item and/or overall unfavorable variances within 12% of the DIP Budget amounts) after the Default Notice/Cure Period;

**8.1.20.** The entry of an order (a) which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code with respect to any material contract, lease, or obligation or against any critical vendor; (b) allowing a third party to proceed against any material assets or contracts of any of the Borrowers; or (c)

otherwise adversely affecting the Interim Borrowing Lien or Final Borrowing Lien after the Default Notice/Cure Period.

**8.1.21.** With the exception of the termination or suspension of operations contemplated by the DIP Budget, any of the Borrowers shall liquidate, dissolve, terminate or suspend its business operation or otherwise fail to operate its business in the ordinary course or merge with another Person unless such Borrower is the surviving entity, or the Borrowers consummate a sale of any material portion of such Borrower's assets without the Lender's consent that does not indefeasibly pay in full in cash the DIP Obligations owed to the Lender on the effective date of such sale;

**8.1.22.** Any material representation or warranty made by any of the Borrowers in this Agreement, or by the Borrowers (or any of their Officers) in any agreement, certificate, instrument or financial statement or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement shall prove to have been incorrect in any material respect when deemed to be effective;

**8.1.23.** The Lender believes in good faith that the prospect of payment in full of any part of the DIP Obligations, or that full performance by the Borrowers under the DIP Loan Documents, is impaired, or that there has occurred any Material Adverse Change in the business or financial condition of any of the Borrowers;

**8.1.24.** If any creditor of any of the Borrowers receives any adequate protection payment, other than utility deposits reclassified as adequate protection payments or deposits or payments to a utility covered by a utility order provided payment does not exceed the utility order amount and DIP Budget, which is not fully acceptable to the Lender in its sole discretion, or any Lien is granted as adequate protection other than as set forth in the DIP Facility Orders;

**8.1.25.** A Change in Control occurs with respect to any Borrower;

**8.1.26.** Any of Borrowers' failure to pay any material post-petition obligation when due after the Default Notice/Cure Period;

**8.1.27.** Any material impairment of the Collateral or the termination of any state or federal license or authorization or material contract after the Default Notice/Cure Period;

**8.1.28.** (a) Any of Borrowers' failure to maintain requisite licenses to properly operate their present businesses; (b) any of the Borrowers' facilities which is operating as of the date of entry of the Final Order is shut down or ceases to operate for any reason; or (c) a party, other than the current manager(s) of Borrowers, manages any of the Borrowers' assets after the Default Notice/Cure Period;

**8.1.29.** Any failure by any of the Borrowers to deposit proceeds into a lockbox account after the Default Notice/Cure Period;

**8.1.30.** The occurrence of a Material Adverse Change after the Default Notice/Cure Period;

**8.1.31.** The failure of any of the Borrowers to have the continued use of cash collateral pursuant to the order entered in the Chapter 11 Cases on the *Emergency Motion for Interim and Final Orders Authorizing the Debtor to Use Cash Collateral and to Provide Adequate Protection to Prepetition Lenders* (or any subsequent order acceptable to Lender), which orders must be satisfactory to Lender;

**8.1.32.** Any failure by any of the Borrowers duly and punctually to observe, perform or discharge any material obligation or duty imposed upon them by the DIP Facility Orders after the Default Notice/Cure Period;

**8.1.33.** Any Borrower breaches any material warranties made in the Term Sheet, or in any of the DIP Loan Documents or such statement was not true when made after the Default Notice/Cure Period; and

**8.1.34.** The failure of the Borrowers to pay on the Maturity Date the DIP Obligations in full and in cash without delay, defense, reduction, setoff, recoupment, counterclaim, subordination or other reduction.

**8.2.** No Obligation to Advance Upon Default. For the avoidance of doubt, Lender shall not have any obligation to advance or continue advancing any Advances under this Agreement during the Default Notice/Cure Period.

## **9. LENDER' RIGHTS AND REMEDIES**

**9.1.** Upon the occurrence of an Event of Default and the expiration of any applicable Default Notice/Cure Period with respect thereto as set forth in Section 8.1, the Lender shall be entitled to immediately exercise any or all of the following rights and remedies, and the automatic stay provided under Section 362 of the Bankruptcy Code shall be deemed lifted or modified to the extent necessary to allow the Lender to take the actions described in this Section 9.1 without further order of the Bankruptcy Court or need for filing a motion for relief or modification of the automatic stay or any other pleading:

(a) Declare the DIP Facility to be terminated, whereupon the same shall forthwith terminate, and make no Advances thereunder;

(b) Declare the DIP Obligations to be forthwith due and payable, whereupon all DIP Obligations shall become and be forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which the Borrowers hereby expressly waive;

(c) Declare the Lender's right to use cash collateral to be terminated, where upon the same shall forthwith terminate, provided that, (i) with the written agreement of the Lender or (ii) pursuant to an order of the Bankruptcy Court upon emergency motion and upon no less than two full business days' notice to Lender, the Borrowers may use only that amount of cash collateral necessary to preserve and protect the Collateral, which may include ongoing operations for a period not to exceed thirty (30) days or such additional period of time to which Lender agrees in its sole discretion; and

(d) Charge the Default Rate on all DIP Obligations.

(e) Lender may apply any and all money owing by the Lender to the Borrowers to the payment of the DIP Obligations, in the Lender's sole discretion, subject to and in accordance with Section 9.4 hereof;

(f) The Lender may exercise and enforce any and all rights and remedies available upon default to a secured party under the UCC, including the right to take possession of Collateral, or any evidence thereof, proceeding without judicial process or by judicial process, and the right to sell, lease or otherwise dispose of any or all of the Collateral (with or without giving any warranties as to the Collateral, title to the Collateral or similar warranties), and, in connection therewith, the Borrowers will on demand assemble the Collateral and make it available to the Lender at a place to be designated by the Lender which is reasonably convenient to all parties;

(g) The Lender may exercise and enforce its rights and remedies under this Agreement, the DIP Loan Documents, the Term Sheet, and the DIP Facility Orders;

(h) The Lender may without regard to any waste, adequacy of the security or solvency of the Borrowers, apply for the appointment of a receiver of the Collateral, to which appointment the Borrowers hereby consent, whether or not foreclosure proceedings have been commenced under the DIP Loan Documents and whether or not a foreclosure sale has occurred;

(i) The Lender may exercise any other rights and remedies available to them by law or agreement subject only to the Carve-Out; and/or

(j) If the Lender sells any of the Collateral on credit, the DIP Obligations will be reduced only to the extent of payments actually received. If the purchaser fails to pay for the Collateral, the Lender may resell the Collateral and shall apply any proceeds actually received to the DIP Obligations.

**9.2. Power of Attorney.** Borrowers hereby irrevocably appoint Lender as their lawful attorneys-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrowers' names on any checks or other form of payment or security; (b) sign Borrowers' names on any invoice or bill of lading for any Account or drafts against or notices to Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Lender determines reasonable; (d) make, settle, and adjust all claims under Borrowers' insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Lender or a third party as the UCC permits. Borrowers hereby appoint Lender as their lawful attorneys-in-fact to sign Borrowers' names on any documents necessary to perfect or continue the perfection of any security interest after an Event of Default has occurred until all DIP Obligations (other than contingent obligations for which no claim has been made) have been satisfied in full and Lender is under no further obligation to make Advances hereunder. Lender's foregoing appointment as Borrowers' attorneys-in-fact, and all of Lender's rights and powers, are coupled with an interest and are irrevocable until all DIP Obligations (other than contingent obligations for which no claim has been made) have been fully repaid and performed and Lender's obligation to provide Advances terminates.

**9.3. Protective Payments.** If Borrowers fail to obtain the insurance called for by Section 6.9 or fail to pay any premium thereon or fail to pay any other amount which Borrowers are obligated to pay under this Agreement or any other DIP Loan Document, or any other amounts the Lender believes, in its sole discretion, are needed to protect the Collateral, Lender may obtain such insurance or make such payment, and all amounts so paid by Lender are Bankruptcy Fees and immediately due and payable, bearing interest at the then highest applicable rate, and secured by the Collateral. Lender will make reasonable efforts to provide Borrowers with notice of Lender obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Lender are deemed an agreement to make similar payments in the future or Lender's waiver of any Event of Default.

**9.4. Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing, Lender may apply any funds in its possession, whether from Borrowers account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise: (a) first to the DIP Obligations outstanding with respect to the DIP Facility; and (b) any surplus shall be paid to Borrowers or to other Persons legally entitled thereto. Borrowers shall remain liable to Lender for any deficiency.

**9.5. Lender's Liability for Collateral.** So long as Lender complies with applicable law and reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Lender, Lender shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrowers bear all risk of loss, damage or destruction of the Collateral, except to the extent caused by Lender's gross negligence or willful misconduct.

**9.6. No Waiver; Remedies Cumulative.** Lender's failure, at any time or times, to require strict performance by Borrowers of any provision of this Agreement or any other DIP Loan Document shall not waive, affect, or diminish any right of Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Lender and then is only effective for the specific instance and purpose for which it is given. Lender's rights and remedies under this Agreement and the other DIP Loan Documents are cumulative. Lender has all rights and remedies provided under the UCC, by law, or in equity. Lender's exercise of one right or remedy is not an election, and Lender's waiver of any Event of Default is not a continuing waiver. Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7. Demand Waiver.** Borrowers waive demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lender on which any Borrower is liable.

## **10. NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**"), other than Advance requests made pursuant to Section 3.5, by any party to this Agreement or any other DIP Loan Document must be in writing and be delivered or sent by mail at the addresses or facsimile numbers listed below. Lender or Borrowers may change their notice address by giving the other party written notice thereof.

Each such Communication shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, registered or certified mail, return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission (with such facsimile promptly confirmed by delivery of a copy by personal delivery or United States mail as otherwise provided in this Section 10); (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated below. Advance requests made pursuant to Section 3.5 must be in writing and may be in the form of electronic mail, delivered to Lender by Borrowers at the e-mail addresses of Lender provided below and shall be deemed to have been validly served, given, or delivered when sent (with such electronic mail promptly confirmed by delivery of a copy by personal delivery or United States mail as otherwise provided in this Section 10). The Lender or any Borrower may change its address, facsimile number, or electronic mail address by giving the other parties hereto written notice thereof in accordance with the terms of this Section 10.

If to Borrowers: SA-ST PETERSBURG LLC, ET AL  
Attn: Trey Blalock  
4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
Email: tblalock@hcnavigator.net

with a copy to: NELIGAN FOLEY, LLP  
Attn: Patrick J. Neligan, Jr.  
325 N. St. Paul, Suite 3600  
Dallas, Texas 75201  
Fax: 214-840-5301  
Email: pneligan@neliganlaw.com

If to Lender: SA MEZZ HOLDINGS LLC  
Attn: Susan Whitney  
Authorized Representative  
4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
Email: swhitney@sallc.net

with a copy to: HELLER, DRAPER, PATRICK, HORN &  
DABNEY, L.L.C.  
650 Poydras St., Suite 2500  
New Orleans, LA 70130  
Attn: William H. Patrick, III  
Fax: 504-299-3399  
Email: wpatrick@hellerdraper.com

## **11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER AND JUDICIAL REFERENCE**

New York law governs the DIP Loan Documents without regard to principles of conflicts of law. Borrowers and Lender each submit to the exclusive jurisdiction of the Bankruptcy Court and, to the extent that the Bankruptcy Court does not have jurisdiction, to the exclusive jurisdiction of the State and Federal courts in New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the DIP Obligations, or to enforce a judgment or other court order in favor of Lender. Borrowers expressly submit and consent in advance to such jurisdiction in any action or suit commenced in any such court, and Borrowers hereby waive any objection that they may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrowers hereby waive personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrowers at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrowers' actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWERS AND LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE DIP LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

## **12. GENERAL PROVISIONS**

**12.1. Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrowers may not assign this Agreement or any rights or DIP Obligations under it without Lender's prior written consent (which may be granted or withheld in Lender's discretion). The Lender has the right, without the consent of or notice to Borrowers, to sell, transfer, negotiate, or grant participation(s) in all or any portion(s) of, or any interest in, the DIP Facility or rights, and benefits under this Agreement and the other DIP Loan Documents.

**12.2. Releases.** Effective as of the date hereof, the Borrowers, their successors, and assigns hereby release and forever discharge Lender and its owners, members, managers, officers, directors, employees, agents, attorneys, advisors, representatives, controlling persons, subsidiaries, successors, and assigns from any and all claims, demands, proceedings, causes of action, orders, obligations, contracts, agreements, debts, and liabilities whatsoever, whether known or unknown, suspected or unsuspected, both at law and in equity (collectively, "**Claims**"), which the Borrowers now have, have ever had, or may hereafter have against the respective persons hereby released, whether arising contemporaneously with or prior to the date hereof for any actions, omissions, or events arising from or directly related to this Agreement, the Term Sheet, the DIP Facility Orders, the DIP Loan Documents and/or the DIP Facility;

provided, however, that nothing contained herein shall operate to release any obligations of Lender arising under this Agreement or the DIP Facility Orders. Effective as of the date hereof, the Borrowers covenant, on behalf of themselves and their successors and assigns, not to sue any of the parties released in this paragraph on the claims released in this paragraph.

**12.3. Time of Essence.** Time is of the essence for the performance of all DIP Obligations in this Agreement.

**12.4. Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.5. Amendments; Waivers; Integration.** All amendments to this Agreement must be in writing signed by the Lender and Borrowers. This Agreement and the DIP Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the DIP Loan Documents merge into this Agreement and the DIP Loan Documents. Any amendment or waiver of, or any consent to deviation from, any provision of the terms of this Agreement or any of the DIP Loan Documents shall be in the sole and absolute discretion of the Lender.

**12.6. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

**12.7. Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all DIP Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied.

**12.8. Confidentiality.** In handling any financial statements of Borrowers or other confidential information, Lender shall exercise the same degree of care that they exercise for their own proprietary information, but disclosure of information may be made: (a) to Lender's Subsidiaries or Affiliates (provided, however, Lender shall use commercially reasonable efforts to obtain Subsidiaries' or such Affiliates' agreement to terms of this provision); (b) to prospective transferees or purchasers of any interest in the Advances (provided, however, Lender shall use commercially reasonable efforts to obtain such prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Lender's regulators or as otherwise required in connection with Lender's examination or audit; and (e) as Lender reasonably considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (i) is in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain after disclosure to Lender; or (ii) is disclosed to Lender by a third party, if Lender does not know that the third party is prohibited from disclosing the information.

**12.9. Bankruptcy Fees.** The Borrowers shall pay the reasonable fees, expenses and disbursements of the Lender and Lender's counsel in connection with the DIP Facility, including but not limited to the preparation and negotiation of all term sheets (including, without limitation, the Term Sheet), this Agreement, the DIP Loan Documents, all agreements, instruments, documents, pleadings related thereto and any amendments thereto or to the

Collateral, and any and all reasonable fees and expenses related to the Collateral, including, without limitation, all expenses related to any federal or state regulatory filings. The Borrowers shall also pay the costs and expenses of implementation and enforcement of the DIP Facility, the Term Sheet, the DIP Loan Documents and the DIP Facility Orders, including reasonable fees and disbursements of Lender and Lender's counsel and other professionals, periodic field audits, monitoring of assets, and other miscellaneous disbursements. Each Borrower shall pay all out-of-pocket costs and expenses of the Lender and Lender's counsel in connection with the DIP Facility, the Term Sheet, the DIP Loan Documents, the DIP Facility Orders and the Chapter 11 Cases, including, but not limited to reasonable travel expenses ("**Bankruptcy Fees**"). At the sole discretion of Lender, the Bankruptcy Fees may be added monthly to the principal under the Term Sheet, this Agreement and the DIP Loan Documents rather than being paid monthly in cash.

**12.10. Right of Set Off.** Borrowers hereby grant to Lender, a lien, security interest and right of set off as security for all DIP Obligations to Lender, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender (including a Lender subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Lender may set off the same or any part thereof and apply the same to any Obligation of Borrowers then due and payable and regardless of the adequacy of any other collateral securing the DIP Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE DIP OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWERS ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**12.11. Lender as Party-in-Interest.** The Borrowers hereby stipulate and agree that the Lender is and shall remain a party in interest in the Chapter 11 Cases and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith. Nothing in this Agreement or any other DIP Loan Document shall be deemed to be a waiver of any of the Lender's rights or remedies under applicable law or documentation. Without limitation of the foregoing, the Lender shall have the right to make any motion or raise any objection they deem to be in their interest (specifically including but not limited to objections to use of proceeds of the DIP Facility, to payment of professional fees and expenses or the amount thereof, to sales or other transactions outside the ordinary course of business or to assumption or rejection of any executory contract or lease).

**12.12. Waiver of Right to Obtain Alternative Financing.** In consideration of the Advances to be made to the Borrowers by the Lender, Borrowers hereby further waive any right they may have to obtain an order by the Bankruptcy Court authorizing the Borrowers to obtain financing pursuant to Section 364 of the Bankruptcy Code from any person other than the Lender, unless such financing would result in all of the DIP Obligations to the Lender (whether arising before, on or after the date of this Agreement) being paid in full, in cash, on or before the expiration of the term of this Agreement.

**12.13. Conflicts Between Agreement and DIP Facility Orders; Construction.** In the event of a direct conflict between the terms and conditions of this Agreement or the DIP Loan Documents on one hand and the Term Sheet or DIP Facility Orders on the other hand, the terms and conditions of the Term Sheet or DIP Facility Orders, as applicable, shall control with respect

thereto. It is the intention of the parties that this Agreement and the DIP Loan Documents are supplemental to the terms and conditions of the Term Sheet and the DIP Facility Orders, and in construing this Agreement and the DIP Loan Documents, effect should be given to this Agreement and the DIP Loan Documents in the broadest sense so as to give effect to each and every one of this Agreement, the DIP Loan Documents, the Term Sheet, and DIP Facility Orders to the greatest extent possible.

**12.14. Application of Payments to DIP Obligations; Application of Proceeds of Collateral.** All proceeds from the sale of, or other realization upon, all or any part of the Collateral shall be immediately paid in cash by Borrowers to Lender.

### **13. DEFINITIONS**

**13.1. Definitions.** As used in this Agreement, the following terms have the following meanings:

“**Accounts**” means all “accounts” as defined in the UCC with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrowers.

“**Account Debtor**” means any “account debtor” as defined in the UCC with such additions to such term as may hereafter be made.

“**Advance**” or “**Advances**” means an advance (or advances) under the DIP Facility.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Availability Amount**” means, at any time, the Maximum Loan Amount minus the aggregate amount of all DIP Obligations outstanding at such time. The aggregate amount of all DIP Obligations under this Agreement outstanding at any time shall not exceed the Maximum Loan Amount.

“**Avoidance Action Recoveries**” shall mean causes of action arising or held by the Borrowers under Sections 502, 510, 541, 544, 545, 547, 548, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws.

“**Bankruptcy Code**” is defined in the Recitals hereof.

“**Bankruptcy Fees**” is defined in Section 12.9.

“**Borrowers**” are defined in the preamble hereof.

“**Borrowers’ Books**” are all Borrowers’ books and records including ledgers, federal and state tax returns, records regarding Borrowers’ assets or liabilities, the Collateral, business

operations or financial condition, and all computer programs or storage or any equipment containing such information.

**“Borrowing Request”** means a request and certification in substantially the form attached as Exhibit D hereto, executed by an Authorized Representative of Borrowers and delivered to the Lender.

**“Business Day”** is any day that is not a Saturday, Sunday or a day on which Lender is closed.

**“Carve-Out”** has the meaning specified in the DIP Facility Orders, as then in effect.

**“Cash Balance”** means, at any time, unrestricted cash and Cash Equivalents of Borrowers, on deposit in a Collateral Account and subject to a Control Agreement.

**“Cash Equivalents”** means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (c) certificates of deposit issued by a bank maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

**“Change in Control”** means any event, transaction, or occurrence as a result of which (a) any “person” (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Securities Exchange Act of 1934, as amended (the **“Exchange Act”**)), other than the owners as of the Effective Date and other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrowers, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrowers, representing twenty-five percent (25%) or more of the combined voting power of Borrowers’ then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrowers (together with any new directors whose election by the Board of Directors of Borrowers was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

**“Chapter 11 Cases”** means the voluntary Chapter 11 cases commenced by the Borrowers on the Petition Date in the Bankruptcy Court.

**“Chattel Paper”** means all “chattel paper” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Closing Date”** means the first date practicable after all the conditions to closing set forth in Section 3.3 are satisfied.

**“Collateral”** is any and all properties, rights and assets of Borrowers described on **Exhibit B**.

**“Collateral Account”** is any Deposit Account, Securities Account, or Commodity Account.

**“Commercial Tort Claims”** means all “commercial tort claims” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Commodity Account”** means any “commodity account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Communication”** is defined in Section 10.

**“Constituent Documents”** shall mean, for any Person, such Person’s formation documents, as certified with the Secretary of State of such Person’s state of formation on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**“Contingent Obligation”** is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**“Control Agreement”** means any control agreement entered into among the depository institution at which any of the Borrowers maintains a Deposit Account or the securities intermediary or commodity intermediary at which any of the Borrowers maintains a Securities Account or a Commodity Account, Borrowers, and Lender pursuant to which Lender obtains control (within the meaning of the UCC) over such Deposit Account, Securities Account, or Commodity Account.

**“Default”** means any event which with notice, would constitute an Event of Default.

**“Default Notice/Cure Period”** means (a) Lender’s written notice of such breach to the Borrowers, (b) the filing of such notice in the record of the Chapter 11 Cases and (c) the Borrowers’ failure to cure any such breach within five (5) business days of the filing of such written notice in the record of the Chapter 11 Cases.

“**Default Rate**” is defined in Section 2.2(b).

“**Deposit Accounts**” means any “deposit accounts” as defined in the UCC with such additions to such term as may hereafter be made.

“**DIP Budget**” means the Borrowers’ budget for the then applicable time period budget showing all projected cash receipts and all projected cash disbursements (with detail as to sources of cash receipts and identification of cash disbursements) for the Borrowers now or hereafter delivered to the Lender pursuant and approved by Lender pursuant to Section 3.3(c). The DIP Budget shall be substantially in the form of Exhibit A annexed hereto and made a part hereof.

“**DIP Facility**” means the DIP term loans the Lender may, in its sole discretion, advance and make available to the Borrowers in two or more Advances, pursuant to and in accordance with the terms and conditions of this Agreement, including the Interim Borrowing Advances and Final Borrowing Advances.

“**DIP Facility Orders**” means each and both of the Interim Order and the Final Order.

“**DIP Loan Documents**” are, collectively, this Agreement, the Term Sheet, Note, or notes or guaranties now or hereafter executed by Borrowers or any guarantor, the DIP Facility Orders, and any other present or future agreement between Borrowers, any guarantor, and the Lender, and/or for the benefit of Lender in connection with this Agreement, in such form and containing such terms and conditions as reasonably required by Lender now or in the future, all as amended, restated, and/or otherwise modified.

“**DIP Obligations**” means the Borrowers’ obligations for the repayment of Advances under the DIP Facility and any and all interest, costs, expenses and any other amounts Borrowers owe Lender under the Term Sheet, this Agreement, or any DIP Loan Document.

“**Documents**” means all “documents” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

“**Dollars,**” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Effective Date**” means the date upon which the Interim Order has been entered and all conditions precedent to the making of the first Advance hereunder have been satisfied or waived. The Effective Date is endorsed at the end of the signature pages hereto.

“**Equipment**” means all “equipment” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employment Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

**“Final Borrowing Advances”** means the Advances defined as such in the Recitals hereof.

**“Final Borrowing Lien”** is defined in Section 4.1(b) hereof.

**“Final Order”** means a final order of the Bankruptcy Court pursuant to section 364 of the Bankruptcy Code, approving this Agreement, the other DIP Loan Documents, confirming the Interim Order, and authorizing on a final basis the incurrence by the Borrowers of permanent post-petition secured and super priority indebtedness in accordance with this Agreement, and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned, in substantially the form of Exhibit C hereto and in form and substance satisfactory to the Lender.

**“Funding Date”** is any date on which an Advance is made to or on account of Borrowers which shall be a Business Day.

**“GAAP”** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

**“General Intangibles”** means all “general intangibles” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Payment Intangibles, Software, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**“Goods”** means all “goods” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made, and includes all Equipment and Inventory and all accessions and attachments thereto.

**“Health-Care-Insurance Receivables”** means all “health-care-insurance receivables” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made

**“Indebtedness”** is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

**“Instruments”** means all “instruments” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Interim Borrowing Advances”** means the Advances defined as such in the Recitals hereof.

**“Interim Borrowing Lien”** means the fully perfected security interest granted to the Lender to secure the DIP Obligations of the Debtors for the Interim Borrowing Advances pursuant to the Interim Order.

**“Interim Order”** means that certain *Interim Order Authorizing and Approving (A) Debtor in Possession Financing Under Section 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001(c), and (B) Modification of the Automatic Stay Under Section 362 of the Bankruptcy Code* [Dkt. No. 209] entered by the Bankruptcy Court on September 16, 2014.

**“Inventory”** means all “inventory” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrowers’ custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

**“Investment Property”** means all “investment property” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Lender”** is defined in the preamble hereof.

**“Letter of Credit Rights”** means all “letter-of-credit rights” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Lien”** is a mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

**“Material Adverse Change”** is the occurrence of a material adverse change, in each case as determined by Lender in its sole and absolute discretion, including without limitation: (a) a material impairment in the perfection or priority of Interim Borrowing Lien or Final Borrowing Lien in the Collateral or in the value of such Collateral; (b) a Material Adverse Change in the business, operations, assets or condition (financial or otherwise) of any of the Borrowers; (c) a material impairment of the prospect of repayment of any portion of the DIP Obligations; (d) Lender determines, based upon information available to it and in its reasonable business judgment, that there is a reasonable likelihood that Borrowers shall fail to comply with one or more of the financial covenants in Section 6 during the next succeeding financial reporting period; (e) Lender determines, based upon information available to it and in its reasonable business judgment, that there is a reasonable likelihood that Lender will not be able to enforce their rights and remedies pursuant to this Agreement, the DIP Facility Orders and the DIP Loan Documents; or (f) any such material adverse change resulting from the entry of any order of the Bankruptcy Court, in (1) the condition (financial or otherwise), operations, assets, business or

business prospects of the Borrowers, (2) the Borrowers' ability to repay the DIP Obligations and/or (3) the value of the Collateral.

**"Maturity Date"** means the date which is the earliest of:

- (i) The earliest of: (a) six (6) months after the entry of the Interim Order, (b) the occurrence of an Event of Default, (c) the closing of any sale of any material part of the Collateral pursuant to section 363 of the Bankruptcy Code, or (d) the Effective Date of a Plan of Reorganization;
- (ii) The exercise of, or filing of any motion to permit the exercise of, any rights or remedies of PacWest under its pre- or post-petition liens or under any order permitting the use of cash collateral of the Borrowers;
- (iii) entry of an order reversing in any respect any DIP Facility Orders (unless waived in writing by Lender);
- (iv) the conversion of any of the Borrowers' Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code;
- (v) the appointment of a trustee or an examiner with special powers in any of the Borrowers' Chapter 11 Cases; and
- (vi) the dismissal of any of the Borrowers' Chapter 11 Cases.

**"Maximum Loan Amount"** means the total of the Interim Borrowing Advances and the Final Borrowing Advances. It is contemplated that the Maximum Loan Amount shall be \$3,000,000.00, subject to adjustment per Section 2.1.1 of this Agreement..

**"Motion"** is defined in the Recitals hereof.

**"Net Working Capital"** means for Borrowers on a consolidated basis, an amount equal to the Cash Balance plus Accounts Receivables minus Accounts Payable (post-petition only), determined in accordance with GAAP.

**"Note"** means the Borrowers' promissory note, payable to the order of the Lender, in form and substance acceptable to the Lender, as same may be renewed and amended from time to time, and all replacements thereof.

**"PacWest"** means Pacific Western Bank, successor by merger to CapitalSource Bank.

**"PacWest Loan Agreement"** that certain Revolving Credit and Security Agreement dated as of November 25, 2008 (as amended, restated, supplemented or otherwise modified from time to time) between the Borrowers and PacWest.

**"PacWest Loans"** any pre-petition loans and other extensions of credit under the PacWest Loan Agreement.

**"Payment"** means all checks, wire transfers and other items of payment received by Lender (including proceeds of Accounts and payment of all the DIP Obligations in full) for

credit to Borrowers' outstanding Advances or, if the balance of the Advances has been reduced to zero, for credit to their Deposit Accounts.

**"Payment Intangibles"** means all "payment intangibles" as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**"Permitted Indebtedness"** is:

- (a) Borrowers' Indebtedness to Lender under this Agreement and the other DIP Loan Documents;
- (b) Unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (c) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (d) Indebtedness secured by Permitted Liens;
- (e) (x) Indebtedness in respect of performance bonds, surety bonds, appeal bonds, completion guarantees or like instruments with respect to workers' compensation claims, in each case, incurred in the ordinary course of business, and (y) letter of credit supporting obligations described clause (x) above; and
- (f) Extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrowers or their Subsidiary, as the case may be.

**"Permitted Investments"** are:

- (a) Cash and Cash Equivalents;
- (b) Investments by Borrowers in their Subsidiaries in an amount not to exceed \$1,000,000 at any time outstanding, and Investments by Subsidiaries in Borrowers;
- (c) loans and advances to employees in the ordinary course of business not to exceed \$10,000 in the aggregate at any time outstanding;
- (d) Investments acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;
- (e) Investments consisting of lease, utility and other deposits or advances in the ordinary course of business;
- (f) Investments consisting of extensions or credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(g) Advances in the form of a cash deposit or prepayment of expenses to vendors, suppliers and trade creditors so long as such deposits are made and such expenses are incurred in the ordinary course of business;

(h) Investments that are otherwise permitted under Section 7.7; and

(i) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrowers.

**“Permitted Liens”** are:

(i) Liens securing the obligations under the PacWest Loan Agreement;

(ii) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrowers maintain adequate reserves on their Books, provided that no notice of such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended and the Treasury Regulations adopted thereunder;

(iii) purchase money Liens (x) on Equipment hereafter acquired or held by Borrowers incurred for financing the acquisition of the Equipment securing no more than \$100,000 in the aggregate amount outstanding, or (y) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment and (ii) Liens securing capital lease obligations permitted under clause (h) of Permitted Indebtedness;

(iv) Carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like liens arising in the ordinary course of business which are not overdue for a period of more than forty-five (45) days or which are being contested in good faith by appropriate proceedings;

(v) Leases or subleases and non-exclusive licenses or sublicenses granted in the ordinary course of Borrowers’ business, if entering into such leases, subleases, licenses and sublicenses do not violate the provisions of Section 4.1 hereof;

(vi) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation or to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, leases, governmental contract, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or to secure liability to insurance carriers;

(vii) Liens consisting of judgment or judicial attachment liens, provided that all such Liens secure claims in the aggregate at any time outstanding for the Borrowers and their Subsidiaries that would not constitute an Event of Default;

(viii) Liens arising from precautionary uniform commercial code financing statements filed under (and the precautionary grant of a security interest pursuant to) any lease permitted by this Agreement;

(ix) Liens (i) in favor of collecting banks arising under Section 4-210 of the UCC or (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry, in each case only to the extent such bank accounts are permitted under Section 6.10;

(x) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by either Borrowers or any of their Subsidiaries in the ordinary course of business;

(xi) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business securing liabilities in an aggregate amount not to exceed \$25,000;

(xii) Liens incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets, which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets; and

(xiii) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (o), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

**“Person”** is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**“Petition Date”** is defined in the Recitals hereof.

**“Plan of Reorganization”** means any Chapter 11 plan or plans for the Borrowers to be filed with the Bankruptcy Court in the Chapter 11 Cases; provided, however, that notwithstanding anything to the contrary set forth herein, the Plan of Reorganization (or any amendments or modifications thereto) shall provide for the payment in full in cash of all outstanding DIP Obligations hereunder on the effective date of the Plan of Reorganization.

**“Responsible Officer”** means Borrowers’ senior financial representative or his replacement.

**“Securities Account”** means any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Software”** means all “software” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

**“Subsidiary”** means, with respect to any Person, any Person of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by such Person or one or more Affiliates of such Person.

**“Superpriority Claim”** is defined in Section 4.2 hereof.

“**Supporting Obligations**” means all “supporting obligations” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made.

“**Term Sheet**” is defined in the Recitals hereof.

“**Termination Date**” means the earliest of (i) the Maturity Date, (ii) the effective date of a Plan of Reorganization confirmed by the Bankruptcy Court; (iii) the effective date of a sale of all or substantially all of the assets of the Borrowers; (iv) the filing of a Plan of Reorganization that is not acceptable to the Lender or does not provide for the immediate payment, in full, in cash, of all DIP Obligations due under the “DIP Facility” is an Advance or Advances made by Lender to any and all of Borrowers pursuant to and in accordance with the terms and conditions of this Agreement, including the Interim Borrowing Advances and Final Borrowing Advances; (v) October 8, 2014, if the Final Order has not been entered by that date; or (vi) the occurrence of an Event of Default, pursuant to Section 8.

“**Transfer**” is defined in Section 7.1.

“**UCC**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the UCC is used to define any term herein or in any DIP Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the creation, attachment, perfection, or priority of, or remedies with respect to, Lender’ Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes on the provisions thereof relating to such creation, attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

[Signature pages follow.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as a sealed instrument under the laws of the State of New York as of October \_\_, 2014.

**BORROWERS:**

SA-LAKELAND, LLC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SA-CLEWISTON, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SA-PETERSBURG, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CHC-SPC OPERATOR, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CHC-CLP OPERATOR HOLDING, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

{00343080-5}

**LENDER:**

SA MEZZ HOLDINGS LLC

By: \_\_\_\_\_

Name:

Title:

Address:

Phone:

Fax:

E-mail:

## **Table of Exhibits and Schedules**

Exhibit A	DIP Budget
Exhibit B	Collateral
Exhibit C	Form of Final Order
Exhibit D	Form of Borrowing Request
Schedule 5.1	Trade Names, Chief Executive Office, Principal Place of Business, and Locations of Collateral
Schedule 5.5	Subsidiaries
Schedule 5.7	Litigation Matters
Schedule 5.12	ERISA

**EXHIBIT A**

**DIP Budget**

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**Palm Terrace**  
**Oct 06 - Nov 28, 2014 Cash Budget**

	Oct 06 - 31-Oct-14	Nov 01 - 28-Nov-14	Total Oct 06 - 28-Nov-14
<b>Beginning Book Cash Balance</b>	<b>794.7</b>	<b>1,217.7</b>	<b>794.7</b>
<b>Operating Cash Inflows</b>			
Resident Care Cash Receipts	2,800.0	2,300.0	5,100.0
<b>Total Operating Cash Inflows</b>	<b>2,800.0</b>	<b>2,300.0</b>	<b>5,100.0</b>
DIP Lender Advance	2,144.0	-	2,144.0
<b>Cash Received</b>	<b>4,944.0</b>	<b>2,300.0</b>	<b>7,244.0</b>
<b>Employee Costs</b>			
Payroll	1,200.0	1,200.0	2,400.0
Concur	12.0	12.0	24.0
American Express / VISA	25.0	25.0	50.0
Benefits	25.0	25.0	50.0
Health Insurance	144.5	144.5	289.0
Workers Comp	15.0	15.0	30.0
<b>Employee Costs</b>	<b>1,421.5</b>	<b>1,421.5</b>	<b>2,843.0</b>
<b>Operating Cash Outflows:</b>			
Rent	-	290.2	290.2
Provider Fee	260.0	260.0	520.0
Halcyon - Therapy	-	240.0	240.0
Bank Fees	6.5	4.5	11.0
Laundry/Housekeeping	30.0	30.0	60.0
Medline	60.0	64.0	124.0
Pharmacy	86.0	88.0	174.0
Food	71.0	72.0	143.0
Utilities	145.0	80.0	225.0
Misc & Local Vendors	180.0	170.0	350.0
<b>Total Operating Cash Outflows</b>	<b>838.5</b>	<b>1,298.7</b>	<b>2,137.2</b>
<b>Non Operating Cash Outflows:</b>			
Legal & Professional Fees	165.0	50.0	215.0
Trustee & Credit Committee Fees	30.0	30.0	60.0
LOC Payoff	2,029.0	-	2,029.0
Taxes	2.0	2.0	4.0
<b>Total Non Operating Cash Outflows</b>	<b>2,226.0</b>	<b>82.0</b>	<b>2,308.0</b>
<b>Corporate/Shared Expenses</b>			
Regional Director (PT Support)	15.0	15.0	30.0
Vendor Allocations - Shared Expenses	20.0	20.0	40.0
<b>Total Corporate Cash Outflows:</b>	<b>35.0</b>	<b>35.0</b>	<b>70.0</b>
<b>Total Cash Outflows Flow</b>	<b>4,521.0</b>	<b>2,837.2</b>	<b>7,358.2</b>
<b>Cash Generated / (Needed)</b>	<b>423.0</b>	<b>(537.2)</b>	<b>(114.2)</b>
Beginning Book Cash Balance	794.7	1,217.7	794.7
Change in Cash	423.0	(537.2)	(114.2)
<b>Ending Book Cash Balance</b>	<b>1,217.7</b>	<b>680.5</b>	<b>680.5</b>

## **EXHIBIT B<sup>1</sup>**

### **Collateral**

The Collateral consists of all of the right, title and interest of the Borrowers and their Affiliates, in and to all of their assets and real and personal property, whether now owned or hereafter acquired, wherever located (but excluding Avoidance Action Recoveries), including, but not limited to:

All Goods, Accounts (including Health-Care-Insurance Receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including Payment Intangibles and Software), Commercial Tort Claims, Documents, Instruments (including any promissory notes), Chattel Paper (whether tangible or electronic), cash, Deposit Accounts, all pledged certificates of deposit, fixtures, Letter-of-Credit Rights (whether or not the letter of credit is evidenced by a writing), securities, Investment Property, Supporting Obligations, Software, and financial assets, all Borrowers' Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing, any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of Borrowers connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing; all Accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing, and any equity securities in any Person organized or formed in the United States of America and/or a jurisdiction outside of the United States of America that is owned or otherwise held by the Borrowers.

“Collateral” shall also include any and all rents, issues, products, offspring and profits generated by any item of Collateral, without the necessity of any further action of any kind or nature by Lender in order to claim or perfect such rents, issues, products, offspring and/or profits.

For the avoidance of doubt and without limiting the scope of the Collateral described above, “Collateral” shall also include all tangible or intangible property pledged to PacWest under the PacWest Loan Agreement and securing the PacWest Loans.

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<sup>1</sup> For the purposes of this Exhibit B, all terms contained in this Exhibit B, unless otherwise indicated, shall have the meanings provided by the Debtor in Possession Loan and Security Agreement to which this Exhibit B forms a part, to the extent such terms are defined therein.

**EXHIBIT C**

**Form of Final Order**

{00343080-5}

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

<b>IN RE:</b>	§	<b>CHAPTER 11</b>
	§	
<b>NEW LOUISIANA HOLDINGS, LLC, et al.</b>	§	<b>CASE NO. 14-50756</b>
	§	
<b>DEBTORS.</b>	§	<b>(Jointly Administered)</b>

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**FINAL ORDER AUTHORIZING AND APPROVING (A) DEBTOR IN POSSESSION  
FINANCING UNDER SECTION 364(c) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 4001(c), AND (B) MODIFICATION OF THE  
AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE**

The Court has considered and acted upon the *Palm Terrace Debtors' Motion (I) For Interim and Final Orders (A) Authorizing and Approving Debtor-in-Possession Financing; (B) Granting Security Interests and Superpriority Claims Pursuant to Sections 364(c) and (d) and 507 of the Bankruptcy Code and Bankruptcy Rule 4001(c); and (C) Modifying the Automatic*

{00343138-5}

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FINAL FINANCING ORDER -- PAGE 1

*Stay; and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 (the “Motion”)*<sup>1</sup> filed on September 5, 2014 by CHC-CLP Operator Holding, LLC, CHC-SPC Operator, Inc., SA-Lakeland, LLC, SA Clewiston, LLC, and SA-St. Petersburg, LLC (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (collectively, the “Chapter 11 Cases”). In the Motion, the Debtors requested authorization to obtain financing from the DIP Lender, to grant the DIP Lender security interests and liens, to accord superpriority claim status in favor of the DIP Lender under Sections 364(c) and 507 of the Bankruptcy Code, and to modify the automatic stay, among other things.

Upon the record of the interim hearing on the Motion held before the Court on September 8, 2014 (the “Interim Hearing”) and the final hearing on the Motion held before the Court on October 7, 2014 (“Final Hearing”); the record of the Chapter 11 Cases; and the *Interim Order Authorizing and Approving (A) Debtor-in-Possession Financing under Section 364(c) and Bankruptcy Rule 4001(c), and (B) Modification of the Automatic Stay under Section 365 of the Bankruptcy Code* [Dkt. No. 209] (the “Interim Order”) entered after the conclusion of the Interim Hearing, after due deliberation and consideration and sufficient cause appearing therefore;

**THE COURT FINDS AND CONCLUDES:**

A. Bankruptcy Chapter 11 Cases. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Also on or prior to the Petition Date, certain affiliates of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered with those affiliated Debtors in Case No. 14-50756. Pursuant to Sections 1107(a) and 1108 of the

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<sup>1</sup> All of the capitalized terms used in this Order will have the meanings ascribed to them in the Motion or the DIP Loan Documents, as applicable, unless otherwise indicated.  
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Bankruptcy Code, each of the Debtors continues to operate its business and manage its properties, affairs and assets as a debtor-in-possession.

B. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the Motion, the relief requested therein and the Final Hearing was served by the Debtors on all creditors on the Debtors' matrices, PacWest, PrivateBank the DIP Lender, other junior secured creditors, the Office of the United States Trustee for the Western District of Louisiana (the "U.S. Trustee"), and the IRS. Under the circumstances, the proper, timely, adequate, and sufficient notice given by the Debtors of the Motion, the relief requested therein and the Final Hearing was reasonable and appropriate under, and complies with, the requirements of due process, Bankruptcy Rule 4001(b), and the rules of this Court such that no other or further notice of the foregoing or of the entry of this Order is required, except as provided herein.

D. The DIP Facility. The Debtors and the DIP Lender engaged in arm's length negotiations and in good faith with respect to the terms and conditions of the DIP Facility, all parties being represented by separate counsel. These negotiations culminated in an agreement upon the DIP Facility. The terms set forth in the Term Sheet, the DIP Credit Agreement, and the DIP Loan Documents among DIP Lender and the Debtors (attached hereto and incorporated by reference herein) are fair, reasonable, and in the best interests of the estates and their creditors. The DIP Credit Agreement will be in substantially the form attached hereto as **Exhibit A**.

E. The DIP Budget. The Debtors and the DIP Lender have agreed upon the DIP Budget, a copy of which is attached hereto as **Exhibit B**, which may be modified in accordance {00343138-5}

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with the DIP Credit Agreement. The DIP Budget for subsequent time periods shall be approved in accordance with the DIP Credit Agreement.

F. The Debtors' Needs for the DIP Facility.

(a) Good cause has been shown for the entry of this Order. The Debtors' use of the funds advanced pursuant to this Order, the DIP Loan Documents, and the DIP Budget was and is immediate and critical. Entry of this Order will minimize any diminution in the value of the bankruptcy estates, and is in the best interests of the Debtors, their creditors, and the bankruptcy estates. The terms of the financing authorized hereby are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The Debtors and their estates would suffer immediate and irreparable harm unless the Court authorizes the Debtors to obtain up to \$3,000,000 in financing, which amount includes the Interim Borrowing Advance of \$600,000 and final Advances in an amount up to a maximum of \$3,000,000 (inclusive of the Interim Borrowing Advance) (the "Final Borrowing Advance").

(b) The Debtors have an immediate need to obtain funds with which to provide payroll, deposits to utilities, working capital and for payment of other critical vendors, continue their operations, and administer and preserve the value of their estates. The absence of additional funding would immediately and irreparably harm the Debtors, their estates and their creditors and the possibility for a successful reorganization. Approval of the DIP Facility will provide the Debtors with immediate and ongoing access to borrowing availability to pay their current and ongoing operating expenses, including postpetition salaries and utility

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and vendor costs. Approval of the DIP Facility will also provide the Debtors the ability to pay in full all obligations due to PacWest on account of any pre-petition loans and other extensions of credit under the PacWest Agreement which payment is in the best interest of the estates as the terms of the DIP Facility are considerably more advantageous to the Debtors than are the terms of the PacWest Loans.

(c) The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit, allowable under Bankruptcy Code 364(c)(2), (c)(3), or under 364(d) except under the terms and conditions provided in this Order. No parties were willing to provide financing in the form of unsecured credit allowable under section 503(b)(1), as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or solely in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code.

(d) Based upon the record of the Interim Hearing and the record of the Final Hearing, and the record of the Chapter 11 Cases, the Court finds that the DIP Loan Documents providing for the DIP Facility were negotiated in good faith and at arm's length between the Debtors and the DIP Lender, and the DIP Obligations shall be deemed to have been created and made in good faith within the meaning of Section 364(e) of the Bankruptcy Code. The DIP Lender is specifically found to be in "good faith" within the meaning of Section 364(e) with respect to all extensions of credit, including Advances, and any and all DIP Obligations.

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(e) The DIP Facility as provided in the DIP Loan Documents with the DIP Lender is the best financing option available to the Debtors because, among other things, the DIP Loan Documents permit the Debtors to secure the postpetition financing required for their operating expenses and other ongoing working capital requirements and to pay off the PacWest Loan, under the best terms available (and better than under the prepetition Credit Agreement), and will enable the Debtors to preserve the going concern value of their business and maximize the value of their estates for all stakeholders.

(f) The Court concludes that the entry of this Order is in the best interests of the Debtors' bankruptcy estates and their creditors as its implementation will, among other things, sustain the operation and value of the Debtors' bankruptcy estates.

**Accordingly it is hereby ORDERED, ADJUDGED AND DECREED that:**

1. Motion Granted. The Motion is hereby granted on a final basis as set forth herein.

This Order is valid and effective immediately upon entry.

2. Notice. Notice of the Motion, and the transactions contemplated thereby, has been provided to all parties entitled thereto and such notice was appropriate under the circumstances, complies with the requirements of due process, Bankruptcy Rule 4001(b), and the rules of this Court and no other or further notice of the Motion, and the transactions contemplated thereby, is or shall be required, except as otherwise provided by this Order.

3. Approval of Advances. The Debtors are authorized pursuant to the DIP Facility Orders to borrow and spend in accordance with the DIP Budget, the Advances pursuant to the DIP Loan Documents, and to pay all fees and charges required under the DIP Loan Documents.

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The Debtors are directed to perform under, and satisfy all DIP Obligations arising under the DIP Loan Documents, in accordance with their terms and the DIP Facility Orders.

4. DIP Loan Documents. Any and all Advances and DIP Obligations shall be subject to this Order and governed by the DIP Loan Documents, until all DIP Obligations shall have been indefeasibly paid and satisfied in full. The DIP Lender is entitled to all rights, liens, superpriority claims, and remedies set forth herein until all DIP Obligations shall have been indefeasibly paid and satisfied in full and in cash.

5. Approval and Binding Effect. The DIP Loan Documents are approved in all respects, and this Order shall be final and binding with respect to the DIP Obligations.

6. Obligations of Debtors; No Recoupment/Setoff. The DIP Loan Documents and the DIP Facility Orders shall constitute the valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Loan Documents and the DIP Facility Orders. No obligation, payment, transfer or grant of security under the DIP Loan Documents or the DIP Facility Orders shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment, counterclaim or subordination.

7. Repayment of DIP Obligations. On the Maturity Date, the Debtors shall repay any and all outstanding all DIP Obligations, including Advances, in full and in cash without delay, defense, setoff, recoupment, counterclaim, subordination or other reduction. All of the rights, remedies, benefits, and protections provided to the DIP Lender under the DIP Facility Orders and the DIP Loan Documents shall survive the Maturity Date until all DIP Obligations shall have been indefeasibly paid and satisfied in full and in cash.

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8. Authorization of Financing. Subject to the terms and conditions of this Order, the following actions by the Debtors are authorized and/or ratified: (a) execution of the DIP Loan Documents; (b) the borrowing and receipt of one or more Advances under the DIP Facility to be used in accordance with the DIP Budget; and (c) satisfaction of all conditions precedent and performance of all obligations under this Order, the DIP Loan Documents and the DIP Budget. Notwithstanding anything to the contrary in this Order, in no event shall the DIP Lender be obligated to make any Advances under the DIP Loan Documents if at the time of a requested Advance an Event of Default or a default by the Debtors under the DIP Facility Orders exists, or if such Advance is for items or expenditures not included in or exceeding the permitted variance under the DIP Budget. Funds advanced under the DIP Facility Orders shall supplement the Debtors' use of cash collateral and solely be used to pay payroll and related expenses, make critical vendor payments, fund working capital requirements and fund deposits to utilities, and to pay in full all obligations due to PacWest on account of any pre-petition loans and other extensions of credit under the PacWest Agreement to the extent necessary to avoid immediate and irreparable harm to the Debtors, which, for purposes hereof, shall mean proceeds used to pay one or more items identified on the DIP Budget. The DIP Lender shall not have any obligation or responsibility to monitor the Debtors' use of proceeds of the DIP Facility and may, but is not required to, rely on the Debtors' representations that the amount of any Advances requested by the Debtors, and the use thereof, are in accordance with the requirements of this Order and the DIP Loan Documents.

9. Final Nature of Order. This Final Order will remain in full force and effect and nothing hereinafter occurring in the Chapter 11 Cases shall diminish or negatively affect the rights of the DIP Lender under the DIP Loan Documents, or the rights of the DIP Lender {00343138-5}

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under any DIP Facility Order or the rights and remedies of the DIP Lender under the DIP Loan Documents. The DIP Facility Orders, the DIP Loan Documents, the Interim Borrowing Liens, the Final Borrowing Liens and the Superpriority Claims granted to and conferred upon the DIP Lender shall continue in full force and effect and shall maintain their priorities as provided in the DIP Facility Orders until all DIP Obligations shall have been indefeasibly paid and satisfied in full and in cash. The DIP Facility Orders, the DIP Loan Documents, the Final Borrowing Liens and the Superpriority Claims shall remain binding on the Debtors, the estates of the Debtors, any Chapter 7 or 11 Trustee appointed in the Chapter 11 Cases, and all interested parties until all DIP Obligations shall have been indefeasibly paid and satisfied in full and in cash; and this Court shall retain jurisdiction for the purpose of enforcing the DIP Loan Documents, the DIP Facility Order, the Interim Borrowing Liens, the Final Borrowing Liens and the Superpriority Claims referred to herein.

10. Collateral for DIP Obligations.

(a) Security Interests in Debtors' Assets

(i) Advances

To secure the DIP Obligations, including the Interim Borrowing Advances and the Final Borrowing Advances, of the Debtors, the DIP Lender shall have a fully perfected security interest ("Final Borrowing Liens") in all pre-petition and post-petition assets of all the Debtors, whether now owned or hereafter acquired including (i) Accounts; (ii) Documents; (iii) Chattel Paper; (iv) Commercial Tort Claims; (v) Deposit Accounts; (vi) General Intangibles (including Payment Intangibles and Software); (vii) Goods (including Equipment, Inventory and all accessions and attachments thereto); (viii) Instruments; (ix) Investment Property; (x) Letter-of-Credit Rights; (xi) Supporting Obligations; (xii) money, rights to the payment of money, and insurance claims related to Accounts and proceeds; (xiii) any other tangible or intangible property pledged to PacWest under the PacWest Agreement; and (xiv) all proceeds and products of the foregoing (collectively, the "Collateral"), and all rights, claims, and other causes of action of such Debtor's estates (including any actions asserted by any

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Debtor or any subsequently appointed trustees or representatives of that Debtor's estate under any section of the Bankruptcy Code), and in each case, all proceeds resulting therefrom, except that avoidance actions under sections 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code are excluded.

"Collateral" shall also include any and all rents, issues, products, offspring and profits generated by any item of Collateral, without the necessity of any further action of any kind or nature by the DIP Lender in order to claim or perfect such rents, issues, products, offspring and/or profits.

The Final Borrowing Liens shall (A) pursuant to Section 364(c)(2) of the Bankruptcy Code, be a perfected first priority senior lien on property of the Debtors' estate that is not otherwise subject to any lien, subject only to the Carve-Out; and (B) pursuant to Section 364(d)(1) of the Bankruptcy Code, be a perfected first priority senior lien on the Collateral that is presently subject to any valid, unavoidable and enforceable pre-petition security interests granted in the Collateral, subject only to the Carve-Out.

(ii) Liens Automatically Perfected

All the above-described pledges, security interests and mortgages, including the Interim Borrowing Liens and the Final Borrowing Liens, securing the DIP Obligations, including the Advances, shall be deemed created and fully perfected and effective upon entry of any DIP Facility Orders, without the need for any additional action, documentation or filing of any type. If the DIP Lender requests, the Debtors shall cooperate with DIP Lender to execute and record further documentation on terms, and pursuant to documentation, satisfactory to the DIP Lender, and, subject to customary and limited exceptions to be agreed upon.

(b) Super Priority Administrative Claims

In addition to the Interim Borrowing Liens and Final Borrowing Liens granted pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, the DIP Lender shall also have and be entitled, pursuant to Section 364(c)(1) of the Bankruptcy Code, to a superpriority administrative expense claim in the amount of all DIP Obligations (the "Superpriority Claim") with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1114 or any other provisions of the Bankruptcy Code, subject only to the Carve-Out (defined below). The Superpriority Claims to be granted to the DIP Lender under the DIP Loan Documents and the DIP Facility Orders may not be the basis to avoid or recover any payments made for legitimate obligations of the Debtors

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pursuant to the then applicable DIP Budget (and the unfavorable 12% variance) in the ordinary course of business.

The DIP Obligations of the Debtors shall be joint and several. To the extent any Debtor is required to repay an amount disproportionate to funds it obtains through the DIP Facility, it shall be entitled to a superpriority claim against the other Debtors under 11 U.S.C. § 364(c)(1), which claim is junior in all respects to the Superpriority Claim of the DIP Lender.

So long as there is no Event of Default (or an event for which notice of default, if required, has been given and which with the lapse of time would constitute an Event of Default) the allowed professional fees and disbursements incurred in the Chapter 11 Cases may be paid, as permitted by and subject to the DIP Budget, subject to entry of an order of the Bankruptcy Court allowing for the interim payment of such amounts, and subject further to final Bankruptcy Court approval of any such professional fees and disbursements.

Upon an Event of Default (or an event for which notice of default has been given and which with the lapse of time would constitute an Event of Default), the DIP Lender's liens on the Collateral and the DIP Lender's administrative claims provided for herein shall be subject to a carve out (the "Carve-Out") in an amount not to exceed (i) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the clerk of the Bankruptcy Court that are due upon the occurrence of an Event of Default; (ii) fees and expenses due to professionals employed by the Debtors, for services rendered as debtors and/or chapter 11 debtors in possession that are due upon the occurrence of an Event of Default in an amount not to exceed \$100,000; and (iii) fees and expenses to professionals employed by the Committee, for services rendered while the Debtors are chapter 11 debtors in possession that are due upon the occurrence of an Event of Default in an amount not to exceed \$25,000.

Fees and expenses within the DIP Budget and allowed and paid to professionals on an interim or final basis and other payments made pursuant to the then applicable DIP Budget shall not be subject to disgorgement for the benefit of the DIP Lender. Notwithstanding the foregoing, no portion of the Carve-Out, and no portion of any amounts approved for payment prior to an Event of Default, are to be utilized for the payment of professional fees, disbursements, costs or expenses of any party, under 11 U.S.C. §§ 326-331, 503(b)(3) or otherwise, in connection with:

- (i) the investigation or assertion of any claims or causes of action against the DIP Lender with respect to the DIP Facility, or the DIP

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Obligations, or

(ii) any litigation against the DIP Lender or its owners, members, managers, officers, directors, employees, agents, attorneys, advisors, representatives, controlling persons, subsidiaries, successors, and assigns in connection with any other claim or cause of action;

In partial consideration of the Carve-Out, the Debtors on behalf of themselves and their bankruptcy estates waive (i) any right or claim to surcharge the DIP Lender, the DIP Facility or Collateral pursuant to 11 U.S.C. § 506(c) or otherwise and (ii) the “equities of the case” exception in Section 552(b) of the Bankruptcy Code.

Wherever in any DIP Facility Order reference is made to any property or assets of the Debtors (including, without limitation, any of the Collateral), such reference shall be understood to include all property of the estates of the Debtors created under Section 541 of the Bankruptcy Code. Notwithstanding the foregoing, the Final Borrowing Liens and the Superpriority Claims shall be subject to the Carve-Out as set forth herein.

11. Evidence of Liability; Automatic Perfection of Interim Borrowing Liens and Final Borrowing Liens. The DIP Facility Orders shall be sufficient and conclusive evidence of the liability of the Debtors for all DIP Obligations respecting all Advances in accordance with the DIP Facility Orders and the DIP Loan Documents, and shall be sufficient and conclusive evidence of (i) the priority, perfection, validity, and enforceability of all of the Interim Borrowing Liens and the Final Borrowing Liens on the Collateral granted to the DIP Lender as set forth herein, and (ii) the validity and enforceability of the DIP Loan Documents, without any further action of the Debtors or any other party. The DIP Lender shall not be required to file any financing statement, mortgage, deed of trust, assignments of rents, notice of lien, and/or any similar document or take any other action (including taking possession of any of the Collateral or

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obtaining control agreements with respect to bank accounts) in order to validate the perfection of the Final Borrowing Liens such validation and perfection being automatically accomplished upon entry of any DIP Facility Order. If the DIP Lender shall, in its discretion, elect for any reason to file any such financing statements, mortgages, deeds of trust, assignments of rent, and/or other documents with respect to such security interests and liens, the DIP Lender is hereby authorized to do so without seeking modification of the automatic stay under 11 U.S.C. § 362, and the Debtors are authorized and directed to execute, or cause to be executed, all such financing statements, mortgages, deeds of trust, assignments of rents, and/or other agreements, documents, or instruments upon the DIP Lender's request and the filing, recording or service thereof (as the case may be) of such financing statements, or other agreements, documents, or instruments shall be deemed to have been made at the time of and on the Petition Date. The DIP Lender may, in its discretion, without seeking modification of the automatic stay under 11 U.S.C. § 362, file a certified copy of this Order in any filing or recording office in any state, county or other jurisdiction in which the Debtors have an interest in real or personal property and, in such event, the subject filing or recording officer is authorized and directed to file or record such certified copy of this Final Order. To the extent that any applicable non-bankruptcy law would otherwise restrict the grant, scope, enforceability, attachment, or perfection of the security interests and liens authorized or created hereby, or otherwise would impose filing or registration requirements with respect thereto, such law is hereby pre-empted to the maximum extent permitted by the United States Constitution, the Bankruptcy Code, applicable federal law, and the judicial power of the United States Bankruptcy Court or other federal court (provided that the DIP Lender may still take such steps as it wishes to perfect the security interests and

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liens under otherwise applicable state law without waiving the benefits of this provision of this Order).

12. Compliance with DIP Budget. The Debtors are strictly prohibited from using funds advanced under the DIP Facility except in accordance with the DIP Facility Orders and the DIP Budget subject to the terms of the DIP Loan Documents. The Debtors shall be permitted to use the funds advanced under the DIP Facility solely to pay the expenses and costs set forth in the DIP Budget, in an amount not to exceed those amounts set forth in the DIP Budget, subject to the terms of the DIP Loan Documents. Notwithstanding anything in this Order or the DIP Budget to the contrary, the DIP Lender reserves all rights to object to any motion, application, or other request for relief that relates to the items referred to or covered by the DIP Budget.

13. The DIP Lender's Fees and Expenses. The Debtors shall pay the Bankruptcy Fees as provided in the DIP Loan Documents. On or before the 15th day of each month following the month for which payment of for Bankruptcy Fees is sought, any professionals for the DIP Lender will submit redacted invoices to the following: (1) the Debtors, and their respective counsel; (2) the Office of U.S. Trustee for the Western District of Louisiana, Lafayette Division; and (3) any official committees appointed through their counsel (hereinafter these parties shall be referred to as the "Service Parties"). Each such entity receiving redacted invoices will have five (5) days after its receipt to review the redacted invoices. At the expiration of the five (5) day period, if no objection is made to the redacted invoices, each professional who submitted redacted invoices will notify the Debtors in writing that no objections have been filed with regard to the professional's fees and expenses, and the payments shall be made directly to the applicable professional by the Debtors. In the event any of the Service Parties have an objection to the compensation or reimbursement sought in a particular invoice and such Service

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Party is unable to reach an agreement with the professionals of the DIP Lender with respect thereto, the DIP Lender's professionals may file a motion for expedited hearing in this Court to resolve the dispute.

14. Events of Default. The occurrence of any of the following events, without notice or cure period (unless otherwise specified therein), shall immediately be an Event of Default under the Term Sheet and/or DIP Loan Documents.

- (a) entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a chapter 7 case;
- (b) entry of an order appointing a chapter 11 trustee in any of the Chapter 11 Cases;
- (c) entry of an order in any of the Chapter 11 Cases appointing an examiner with powers to take any action other than investigate and report;
- (d) expiration or termination of the Debtors' exclusive period to file and confirm a plan of reorganization;
- (e) entry of an order granting any other super-priority claim or lien equal or superior to that granted to the DIP Lender prior to full and indefeasible repayment of the DIP Obligations other than as specifically authorized herein;
- (f) entry of an order reversing, vacating or otherwise modifying, or staying the Order or Final Order approving the DIP Facility, or either such order shall otherwise cease to be in full force and effect;
- (g) any material breach of the Term Sheet and/or the DIP Loan Documents, after (a) the DIP Lender's written notice of such breach to the Debtors, (b) the filing of such notice in the record of the Chapter 11 Cases and (c) the Debtors' failure to cure any such breach within five (5) business days of the filing of such written notice in the record of the Chapter 11 Cases (the "Default Notice/Cure Period");
- (h) the filing of a motion by the Debtors for entry an order staying or otherwise prohibiting the prosecution of any Enforcement Action or any motion or pleading seeking to challenge the DIP Lender's liens or otherwise commencing any cause of action against the DIP Lender;

- (i) the consummation of a sale of any material portion of the Debtors' assets without the DIP Lender's consent that does not indefeasibly pay in full in cash the DIP Obligations owed to the DIP Lender on the effective date of such sale;
- (j) the failure of any Debtor to pay interest, fees, or principal when due under the Term Sheet and DIP Loan Documents after the Default Notice/Cure Period;
- (k) the entry of an order (a) granting stay relief as to any material contract, lease, or obligation or against any critical vendor, (b) allowing a third party to proceed against any material assets or contracts of the Debtors, or (c) otherwise adversely affecting the DIP Lender's liens after the Default Notice/Cure Period;
- (l) failure of any Debtor to perform or comply with any material term or covenant of the Term Sheet or DIP Loan Documents after the Default Notice/Cure Period;
- (m) the filing of a plan of reorganization by the Debtors that does not propose to indefeasibly pay in full in cash on the effective date thereof all DIP Obligations owed to the DIP Lender;
- (n) a change in control of any Debtor;
- (o) any Debtor shall fail to comply in any material respect with the DIP Budget (after accounting for any permitted line-item and/or overall unfavorable variances within 12% of the DIP Budget amount) after the Default Notice/Cure Period;
- (p) the Debtors' failure to pay any material post-petition obligation when due after the Default Notice/Cure Period;
- (q) the Debtors' failure to perform or comply with any material terms or conditions of the DIP Facility Orders or any order authorizing use of cash collateral after the Default Notice/Cure Period;
- (r) the filing by any of the Debtors of any motion or proceeding that could reasonably be expected to result in material impairment of the DIP Lender's rights under the Term Sheet, the DIP Loan Documents and the DIP Facility Orders, including any motion to surcharge the DIP Lender, the DIP Facility or the Collateral under 11 U.S.C. § 506(c) or otherwise after the Default Notice/Cure Period;
- (s) any material impairment of the Collateral or the termination of any of state or federal licenses and authorizations or material contracts after the Default Notice/Cure Period;

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(t) (i) the Debtors' failure to maintain requisite licenses to properly operate their present businesses; (ii) any of the Debtors' facilities which is operating as of the date of entry of this Order is shut down or ceases to operate for any reason; or (iii) a party, other than the current manager of the Debtors, manages the Debtors' assets after the Default Notice/Cure Period;

(u) any failure by any of the Debtors to timely deposit proceeds into lockbox account after the Default Notice/Cure Period;

(v) the failure of the Debtors to have the continued use of cash collateral pursuant to the order entered on the *Emergency Motion for Interim and Final Orders Authorizing the Debtor to Use Cash Collateral and to Provide Adequate Protection to Prepetition Lenders* (or any subsequent order acceptable to Lender) which order must be satisfactory to DIP Lender;

(w) the occurrence of a material adverse change, including without limitation any such occurrence resulting from the entry of any order of the Bankruptcy Court, in each case as determined by DIP Lender in its sole and absolute discretion, in (i) the condition (financial or otherwise), operations, assets, business or business prospects of the Debtors, (ii) the Debtors' ability to repay the DIP Obligations, and/or (iii) the value of the Collateral (each of (i), (ii) and (iii) constituting a "Material Adverse Change") after the Default Notice/Cure Period;

(x) Borrower breaches any material warranties made in the Term Sheet, or any of the DIP Loan Documents or such statement was not true when made after the Default Notice/Cure Period;

(y) the failure of the Debtors duly and punctually to observe, perform, or discharge any material obligation or duty imposed upon them by the DIP Facility Orders after the Default Notice/Cure Period; and

(z) the failure of the Debtors to pay on the Maturity Date the DIP Obligations in full and in cash without delay, defense, reductions, setoff, recoupment, counterclaim, subordination or other reduction.

For the avoidance of doubt, the DIP Lender shall not have any obligation, but may in its sole discretion, advance or continue advancing any Advances during the Default Notice/Cure Period.

15. Remedies. Upon the occurrence of an Event of Default and the expiration of any applicable Default Notice/Cure Period with respect thereto as stated above, notwithstanding the applicability of Section 362 of the Bankruptcy Code, relief from automatic stay shall be deemed

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granted and the DIP Lender shall be entitled to exercise any and all remedies available in law or equity (subject only to the Carve-Out) without obtaining further relief or order from the Bankruptcy Court.

16. Incurrence of Other Debt. Neither the Debtors nor their estates shall incur any debt with priority equal to or greater than that of the DIP Lender, or grant any liens on Collateral subject to the Interim Borrowing Liens and the Final Borrowing Liens, without having paid the DIP Obligations in full and in cash without delay, defense, reductions, setoff, recoupment, counterclaim, subordination or other reduction.

17. No Waiver. Nothing herein shall be deemed to be a waiver by the DIP Lender of its rights to request any other relief or additional and further protection of its interests in any property of the Debtors, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner in the Chapter 11 Cases or the dismissal of the Chapter 11 Cases, or to request any other relief in the Chapter 11 Cases.

18. Preservation of Rights. If the Chapter 11 Cases are dismissed or converted, then neither the dismissal nor conversion of the Chapter 11 Cases shall affect the rights of the DIP Lender under the DIP Loan Documents, or the rights of the DIP Lender under the DIP Facility Orders, and all such rights and remedies of the DIP Lender shall remain in full force and effect as if the Chapter 11 Cases have not been dismissed or converted. If an order converting or dismissing any or all of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with Sections 105, 348 and 349 of the Bankruptcy Code) that (i) the Final Borrowing Liens and the Superpriority Claims granted to and conferred upon the DIP Lender shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Obligations shall have been paid and satisfied in full and in cash, and the Final Borrowing Liens

and the Superpriority Claims shall, notwithstanding such conversion or dismissal, remain binding on the Debtors, the estates of the Debtors, any Chapter 7 or 11 Trustee appointed in the Chapter 11 Cases, and all interested parties; and (ii) this Court shall retain jurisdiction, notwithstanding such conversion or dismissal, for the purpose of enforcing the DIP Loan Documents, the Dip Facility Orders, the Final Borrowing Liens and the Superpriority Claims referred to herein. No reorganization plan proposed in the Chapter 11 Cases or confirmed in the Chapter 11 Cases shall alter the terms of repayment of any of the DIP Obligations as set forth in the DIP Loan Documents or alter or abrogate any of the rights or benefits afforded to the DIP Lender by the DIP Facility Orders, the DIP Loan Documents, the Final Borrowing Liens or Superpriority Claims. In no event shall (i) the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to any Collateral securing any of the DIP Obligations or Superpriority Claims granted herein; (ii) the Final Borrowing Liens be subject to any pre-petition or post-petition lien or security interest that is avoided and preserved for the benefit of the Debtors' estates pursuant to Section 551 of the Bankruptcy Code; or (iii) shall any person or entity who pays (or, through the extension of credit to the Debtors, causes to be paid) any of the DIP Obligations be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lender, by the terms of the DIP Loan Documents or the DIP Facility Orders, until such time as all of the DIP Obligations are paid in full to the DIP Lender.

19. Immediate Effect; Protection of Order. The provisions of this Order shall apply to any and all DIP Obligations, shall be effective immediately upon entry of the Order, and notwithstanding any order that may be entered confirming any plan of reorganization or dismissing or converting the Chapter 11 Cases from chapter 11 to chapter 7, this Order and any {00343138-5}

rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lender, by the terms of the DIP Loan Documents or the DIP Facility Orders, shall remain in full force and effect until such time as all of the DIP Obligations are paid in full and in cash to the DIP Lender.

20. No Prejudice to the Right to Credit Bid. Nothing in the DIP Facility Orders shall prejudice the right of the DIP Lender in any sale approved by the Court that includes the Collateral to credit bid pursuant to section 363(k) of the Bankruptcy Code.

21. Successors and Assigns. The provisions of the DIP Facility Orders shall be binding upon and inure to the benefit of the DIP Lender, the Debtors and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or the Debtors' bankruptcy estates.

22. Effect on Appeal. Consistent with 11 U.S.C. § 364(e), if any or all of the provisions of the DIP Facility Orders are hereafter modified, vacated, or stayed:

(a) such stay, modification, or vacation shall not affect the validity of any obligation, indebtedness, liability, security interest, or lien granted or incurred by the Debtors to the DIP Lender, including the DIP Obligations, Final Borrowing Liens, and Superpriority Claims, prior to the effective date of such stay, modification, or vacation, or the validity, enforceability, or priority of any security interest, lien, priority, or right authorized or created under the original provisions of this Final Order or pursuant to the DIP Loan Documents; and

(b) any indebtedness, obligation, or liability, including the DIP Obligations and Superpriority Claims, incurred by the Debtors to the DIP Lender under the DIP Loan Documents or any DIP Facility Order prior to the effective date of such

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FINAL FINANCING ORDER -- PAGE 20

stay, modification, or vacation shall be governed in all respects by the original provisions of the DIP Facility Orders, and the DIP Lender shall be entitled to all the rights, remedies, privileges, and benefits, including the Final Borrowing Liens and the Superpriority Claims granted herein, with respect to any such indebtedness, obligation, or liability, including the DIP Obligations until the DIP Obligations are paid in full and in cash without delay, defense, reductions, setoff, recoupment, counterclaim, subordination or other reduction. All DIP Obligations have been created in reliance upon the DIP Facility Orders and, therefore, the DIP Obligations incurred or created prior to the effective date of any stay, modification, or vacation of the DIP Facility Orders cannot (i) be subordinated, (ii) lose the priority of the Final Borrowing Liens or the Superpriority Claims, or (iii) be deprived of the benefit of the status of the Final Borrowing Liens, the Superpriority Claims, or any other liens or claims granted to the DIP Lender under the DIP Facility Orders, or the DIP Loan Documents, as a result of any subsequent order in the Chapter 11 Cases, or any superseding case, of the Debtors.

23. Continued Effect of Interim Order. Except as specifically amended, modified, or supplemented hereby, all of the provisions of the Interim Order shall remain in full force and effect and are ratified by this Order.

# # # END OF ORDER # # #

Submitted by:

**NELIGAN FOLEY LLP**

*/s/ Patrick J. Neligan, Jr.* \_\_\_\_\_  
Patrick J. Neligan, Jr. (TX Bar No. 14866000)  
James P. Meunker (TX Bar No. 24002659)  
325 N. St. Paul, Suite 3600  
Dallas, Texas 75202  
Telephone: 214.840.5300  
Facsimile: 214.840.5301  
[pneligan@neliganlaw.com](mailto:pneligan@neliganlaw.com)

***Proposed Attorneys for the Debtor***

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**EXHIBIT D**

**BORROWING REQUEST**

Dated: \_\_\_\_\_, 2014

SA MEZZ HOLDINGS LLC  
Attn: Susan Whitney  
4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
Email: swhitney@sallc.net

Ladies and Gentlemen:

This Borrowing Request is delivered to you pursuant to Section 3.5 of the Debtor in Possession Loan and Security Agreement dated as of October \_\_, 2014 (as modified, amended or supplemented, the “**Loan Agreement**”), by and among: SA Mezz Holdings LLC, as the Lender; SA-Lakeland, LLC; SA-Clewiston, LLC; SA-St. Petersburg, LLC; CHC-SPC Operator, Inc.; and CHC-CLP Operator Holding, LLC (collectively, the “**Borrowers**”). Unless otherwise defined, terms used herein have the meanings provided in the Loan Agreement.

The Borrowers hereby give you notice of and request an Advance under the Loan Agreement (the “**Proposed Borrowing**”) for the account of the Borrowers, and in connection therewith set forth below the information relating to such Proposed Borrowing:

- The Funding Date of the Proposed Borrowing is \_\_\_\_\_, 2014.
- The amount of the Proposed Borrowing is \$\_\_\_\_\_.

In support of the Proposed Borrowing, the reports required pursuant to Section 6.3(a) of the Loan Agreement have been electronically transmitted via email to the Lender.

On behalf of the Borrowers, the undersigned hereby certify that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing requested hereby, before and immediately after giving effect thereto and to the application of the proceeds therefrom:

1. no default or Event of Default has or shall have occurred and be continuing or would result from the making of such Proposed Borrowing;
2. the amount and intended use of proceeds of such Proposed Borrowing are in compliance with the DIP Budget;
3. the representations and warranties made by the Borrowers in Article 5 of the Loan Agreement, and in each of the other DIP Loan Documents, are true and complete on and as of the date hereof and as of the date of the making of such Proposed Borrowing with the same force and effect as if made on and as of such date (or, if any such representation

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or warranty is expressly stated to have been made as of a specific date, as of such specific date);

4. each of the other conditions precedent set forth in Article 3 of the Loan Agreement have been satisfied; and
5. the Bankruptcy Court has approved the Final Borrowing Advances and all DIP Obligations created with respect to the Final Borrowing Advances shall be subject to the DIP Loan Documents and the DIP Facility Orders.

Please wire transfer the proceeds of the Proposed Borrowing to the account set forth on Schedule I attached hereto.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Borrowing Request as an Authorized Officer of the Borrowers on the date first set forth above.

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Name:

Title:

**Schedule I to Borrowing Request**

[Wire Transfer instructions to be provided by Borrowers.]

**Schedule 5.1**

**Trade Names, Chief Executive Office, Principal Place of Business and Locations of Collateral**

**Chief Executive Office for each  
Borrower:**

**SA-Clewiston, LLC**  
301 S. Gloria Street  
Clewiston, FL 33440  
863-983-5123

4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
914-390-4300

**SA-Lakeland, LLC**  
d/b/a Palm Terrace of Lakeland  
1919 Lakeland Hills Boulevard  
Lakeland, FL 33805-2901  
863-688-5612

**SA-St. Petersburg, LLC**  
d/b/a Palm Terrace of St. Petersburg  
521 69th Avenue North  
St. Petersburg, FL 33702  
727-526-7000

**CHC-SPC Operator, Inc.**  
4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
914-390-4300

**CHC-CLP Operator Holding, LLC**  
4 West Red Oak Lane, Suite 201  
White Plains, NY 10604  
914-390-4300

## **Schedule 5.5**

### **Subsidiaries**

Each Borrower at the operator level is a subsidiary of CHC-CLP Operator Holding, LLC. CHC-SPC Operator, Inc. is a subsidiary of CHC-CLP Operator Holding, LLC. CHC-CLP Operator Holding, LLC is a subsidiary of SA-Master Operator Holdings, LLC. Otherwise, there are no subsidiaries.

CHC-CLP Operator Holding, LLC and CHC-SPC Operator, Inc. are the sole members of each of the subsidiary Borrowers. CHC-CLP Operator Holding, LLC is the sole member of CHC-SPC Operator, Inc.

Cypress Health Group, LLC and Judy Schwartzberg Trust are the sole members of CHC-CLP Operator Holding, LLC.

No Borrower owns an interest in, participates in or engages in any joint venture, partnership or similar arrangement with any Person.

**Schedule 5.7**

**Litigation Matters**

See attached.

**SA-Lakeland, LLC Active Litigation**

Matter	Circuit Court / Case No.	Summons Dt	Occurrence Date	Additional Defendants	Plf Firm	Def Firm	Nature of Claim	Arbitration / Trial Date
Hammond, Sherman v. SA-Lakeland, LLC	Pre-Suit	7/31/2013	7/18/12 to 8/23/13	Jeffrey Gerst	Al Ferrara, c/o Morgan & Morgan, One Tampa City Center, Suite 700, Tampa, FL 33602	IN-HOUSE	failure to assess skin breakdown, failure to adequately care plan; and failure to prevent skin breakdown of heels, hips and coccyx	
McCorkel, Fern v. SA-Lakeland, LLC	Pre-Suit	6/22/2014	8/9/13 to 8/19/13	PT Lakeland, LLC; Cypress Health Group, LLC; CHC-CLP Operator Holding, LLC; Cypress Health Care Management Region II, LLC; HC Navigator, LLC; Gulf Coast Facilities, LLC; GCH Management Services, LLC; Gulf Coast Health Care, LLC	Kim Kohn, c/o Goudie & Kohn, 3004 W. Cypress St., Tampa, FL 33609	IN-HOUSE	failure to provide adequate assessments; failed to maintain adequate & complete medical records; and failed to provide protective & supportive services.	
Miller, Ethel v. SA-Lakeland, LLC	Pre-Suit	1/30/2014	2/12/12 to 2/24/12	Jeffrey Gerst; Mitchell Starer; CHC-CLP Operator Holding, LLC; NAE Florida Palm, LLC; 29-31 Florida, LLC; Lovely Hills Florida, LLC; Sagamore Florida, LLC; VLC Florida Palm, LLC; New Century Investor Services, Inc.; Albert Schwartzberg; Robert U. Goldman	Jonathan Gilbert, c/o Colling, Gillbert, Wright, & Carter, 801 N. Orange Ave., Suite 830, Orlando, FL 32801	IN-HOUSE	fall, head and knee injury, subdural hematoma; and death.	
Miller, Verl v. SA-Lakeland, LLC	Pre-Suit	4/16/2014	1/12/13 to 1/30/13	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; Cypress Health Care Management Region III, LLC; HC Navigator, LLC; Jeffrey Gerst	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	IN-HOUSE	falls, rash on buttocks. AHCA made unaanounce visit to find to morphine listed on MARs.	

SA-Lakeland, LLC Active Litigation

14-50756 - #239-1	Seal, David v. SA-Lakeland, LLC	Arbitration	10/21/11 to 3/29/12	12/20/13	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; HC Navigator, LLC; Cypress Ahealth Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairo, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	fall, decubs, multiple skin integrity issues, and infections (UTIs)	Arb: 4/6/15
14-50756 - #239-1	Stamps, Leon v. SA-Lakeland, LLC	Arbitration	4/20/10 to 9/1/11	7/17/12	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress hHealth Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairo, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	fall, infections, UTI, C-Diff, and e-coli.	Arb: 2/23/15
14-50756 - #239-1	Henderson, Juanita v. SA-Lakeland, LLC	Tenth Judicial Circuit/ Case No. 2014-CA-001953	6/2/14	5/11/12 to 6/21/12	SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress Health Care Management, LLC; HC Navigator, LLC; Jeffrey Gerst; Lynn Taphorn	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairo, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	C-Diff, oral thrush, klebsiella pneumonia to surgical wounds, decubs	
14-50756 - #239-1	Polley, Ruby (e/o) SA-Lakeland, LLC	Tenth Judicial Circuit/ Case No. 53-2012-CA-007943	12/11/12	10/25/10 to 11/29/10	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress Health Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairo, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	infections, decubs, weight loss, malnutrition, and death.	Trial: 10/27/14

SA-Lakeland, LLC Active Litigation

14-0756-1 Smith, Bertha (e/o) SA-Lakeland, LLC #239-1	Arbitration	6/4/12	12/14/10 to 2/6/11	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress Health Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	fall, injury to head & nose, decubs, and death Arb: 5/4/15
14-0714-1 Williams, James SA-Lakeland, LLC	Tenth Judicial Circuit/ Case No. 53- 2012-CA- 001825	4/1/13	3/16/11 to present	CHC-SPC Operator, Inc.; Cypress Health Care Management Region III, LLC; Cypress Health Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	infectious, 3rd degree burns resulting in amputation of lt knee; no record of progression of injury; necrotizing fasciitis of lft leg; fall w/injury of rt shoulder.
14-0750-1 Willis, Beulah v. SA-Lakeland, LLC	Tenth Judicial Circuit/ Case No. 53- 2014-CA- 000175	1/27/14	1/30/12 to 2/10/12	CHC-SPC Operator, Inc.; CHC-CLP Operator Holdings, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress Health Care Holdings, LLC; Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	fall resulting in pain; dehydration & malnutrition; weight loss; UTI w/e-coli; drug induced delirium; acute kidney failure & anemia.

SA- ST. PETERSBURG Active Litigation

Matter	Circuit Court / Case No.	Summons Dt	Occurence Date	Additional Defendants	Plf Firm	Def Firm	Nature of Claim	Arbitration /Trial Date
Ferguson, David (e/o) v. SA-St. Petersburg, LLC	Sixth Judicial Circuit/ Case No. 13-CA-003196-CI-11	3/25/13	1/13/11 to 6/23/11	Cypress Health Care Management Region III, LLC; Cypress Health Care Holdings, LLC; Cypress Health Care Management, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	numerous falls, elopement, wounds, improper medication, infection, death	Trial: 9/8/14
Jenney, Marguerite (e/o) v. SA-St. Petersburg, LLC	Sixth Judicial Circuit/ Case No. 12-11378CI-13	9/27/12	10/29/09 to 10/10/11	CHC-SPC Operator, Inc.; CHC-CLP Operator Holding, LLC; SA-Master Operator Holdings, LLC; Cypress Health Care Management Region III, LLC; Cypress Health Care Management, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	UJTs, abuse w/injury, decubs, rashes and scabies, dehydration, renal failure, falls, and death.	
Reynolds, Bryon v. PT St. Petersburg	Sixth Judicial Circuit/ Case No. 12-11378CI-13	2/12/13	8/5/11 to 8/28/11	Bayfront Medical Center	Dalia Huddleston, c/o John Bales Attorneys, 9700 Dr. Martin Luther King, Jr. St., Suite 400, St. Petersburg, FL 33702	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	decubs, unnecessary pain & scaring, failure to follow physician's orders and to notify physician of changes in condition.	



SA-CLEWISTON, LLC Active Litigation

Matter	Circuit Court / Case No.	Summons Dt	Occurence Date	Additional Defendants	Plf Firm	Def Firm	Nature of Claim	Arbitration /Trial Date
McGee-Southerland, Joyce (e/o) v. SA-Clewiston, LLC	Pre-Suit	4/16/2014	8/28/12 to 9/13/13	Cypress Health Care Management Region I, LLC; HC Navigator, LLC; Cypress Health Group, LLC; Devin Eickelmann	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	IN-HOUSE	fall, left eye infection, UIT, skin integrity issues, and weight loss.	
Monroe, Calvin v. SA-Clewiston, LLC	Twentieth Judicial Circuit / Case No. 14-182-CA	3/20/2014	5/27/07 to present	CHC-CLP Operator Holdings, LLC; CHC-SPC Operator, Inc.; SA-Master Operator Holding, LLC, Cypress Health Care Management Region III, LLC, Cypress Health Group, LLC, HC Navigator, LLC, Devin Eickelmann, Stephanie Markoski	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	rains, infections (e. coli, conjunctivitis, UTI, rt 2nd tor infections, URIs and rt eye infection), skin integrity issues (skin tear to rt knee, scratch to rt elbow and lacerations to forehead requiring hospitalization), dehydration, malnutrition,	
Santiago, David (e/o) v. SA-Clewiston, LLC	Twentieth Judicial Circuit / Case No. 12-CA-625	5/23/12	2/4/11	CHC-CLP Operator Holdings, LLC; CHC-SPC Operator, Inc.; SA-Master Operator Holding, LLC, Cypress Health Care Management Region III, LLC, Cypress Health Care Holdings, LLC, Cypress Health Group, LLC	Wilkes & McHugh, 1 N. Dale Mabry Hwy, Suite 601, Tampa, FL 33609	Jim Morrison, c/o Quintairos, Prieto, Wood & Boyer, P.A., 1475 Centrepark Blvd., Suite 130, West Palm Beach, FL 33401	Fall on sidewalk resulting in lt radial head fx, rt lateral epicondylitis, If wrist sprain, contusion to rt knee, injuries to shoulder, neck, arm, and back.	Trial: 11/17/14

**Schedule 5.12**

**ERISA**

None.