

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

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	:	
In re:	:	Chapter 11
	:	
RYCKMAN CREEK RESOURCES, LLC,	:	Case No. 16-10292 (KJC)
et al.,	:	
	:	Jointly Administered
Debtors. ¹	:	
	:	Re: Docket Nos. 17, 44, 50, 88, 97, 98, 102, 116,
	:	121, 159, 171, 172, 180, 181, 185, 186, 187, 188, 192,
-----	X	195, 783, 789, 799, 801

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO AMEND THE DIP FACILITY TO
OBTAIN ADDITIONAL FINANCING AND GRANTING RELATED RELIEF**

Ryckman Creek Resources, LLC (“Ryckman”) and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors” or the “Company”), hereby move (this “Motion”) this Court, under sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), for entry of interim (the “Interim Supplemental Order”) and final orders (the “Final Supplemental Order,” and together with the Interim Supplemental Order, the “Supplemental Orders”), (i) authorizing the Debtors to obtain interim bridge financing (the “Interim Bridge Financing”) under the terms of the Amendment, the Supplemental Orders, the Final DIP Order (as defined herein), and the *Senior Secured*,

¹ The Debtors and, where applicable, the last four digits of their respective taxpayer identification numbers are as follows: Ryckman Creek Resources, LLC (4180), Ryckman Creek Resources Holding Company LLC, Peregrine Rocky Mountains LLC, and Peregrine Midstream Partners LLC (3363). The address of the Debtors’ corporate headquarters is 3 Riverway, Suite 1100, Houston, TX 77056.



Super-Priority Debtor-in-Possession Credit and Security Agreement, dated as of March 24, 2016 (as amended, supplemented, or otherwise modified, the “DIP Credit Agreement,” and together with all related documents, and including all exhibits and schedules thereto, the “DIP Loan Documents”); (ii) authorizing the Debtors to enter into the *Fifth Amendment to Senior Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement* (the “Amendment”), attached hereto as Exhibit A, to obtain the Additional Financing (as defined below) on a secured, superpriority basis; (iii) continue granting adequate protection pursuant to the terms of the Final DIP Order; (iv) extending the liens, security interests, and superpriority claims of the DIP Lenders to cover the lenders under the Amendment (the “Supplemental DIP Lenders”) with respect to the Additional Financing; (v) scheduling a final hearing; and (vi) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Robert D. Albergotti in Support of Debtors’ Motion for Order Authorizing the Debtors to Amend the DIP Facility to Obtain Additional Financing*, attached hereto as Exhibit B (the “Albergotti Declaration”). In support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

JURISDICTION AND VENUE

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

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, and 364, Bankruptcy Rules 2002 and 4001, and Local Bankruptcy Rule 4001-2.

3. Pursuant to Rule 9013-1(f) of the Local Bankruptcy Rules, the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined

that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the of the parties.

BACKGROUND

I. General

4. On February 2, 2016 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Chapter 11 Cases are jointly administered.

5. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession under Bankruptcy Code sections 1107(a) and 1108.

6. On February 12, 2016 the Office of the United States Trustee for the District of Delaware (the “United States Trustee”) appointed the official committee of unsecured creditors for the Chapter 11 Cases under Bankruptcy Code section 1102 [Docket No. 68] (the “Creditors’ Committee”). No trustee or examiner has been appointed in the Chapter 11 Cases.

7. The Company was formed to engage in the acquisition, development, marketing, and operation of an underground natural gas storage facility (the “Ryckman Creek Facility”), located in Uinta County, Wyoming. The Ryckman Creek Facility is a 50 billion cubic foot storage facility with a working gas capacity of approximately 42 billion cubic feet. It is located approximately 25 miles from the Opal Hub, where five major interstate gas pipelines converge, allowing for distribution to several key consumer markets, including California, Nevada, the Pacific Northwest, and the Midwest.

8. Additional factual background information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the *Declaration of Robert D. Albergotti, the Vice*

President of Restructuring of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 20].

II. The DIP Financing

9. On the Petition Date, the Debtors filed their *Motion For Interim and Final Orders Under Bankruptcy Code Sections 105, 361, 362, 363, and 364, Bankruptcy Rules 2002 and 4001, and Local Bankruptcy Rule 4001-2 (I) Authorizing the Debtors to (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 17] (the “Initial DIP Motion”).

10. The Court scheduled a final hearing on March 1, 2016 to approve the Initial DIP Motion; however, the Debtors and their prepetition lenders were unable to reach an agreement prior to the March 1, 2016 hearing date. Therefore, on February 25, 2016, the Debtors filed the *Debtors’ Emergency Motion For Interim and Final Orders Under Bankruptcy Code Sections 105, 361, 362, 363, and 364, Bankruptcy Rules 2002 and 4001, and Local Bankruptcy Rule 4001-2 (I) Authorizing the Debtors to (A) Increase Amount of Interim Postpetition Financing on a Secured, Superpriority Basis and (B) Continue to Use Cash Collateral, (II) Granting Adequate Protection (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 97] (together with the Initial DIP Motion, the “DIP Motions”).

11. On March 24, 2016, this Court entered the *Final Order (I) Authorizing Debtor Ryckman Creek Resources, LLC to (A) Obtain Postpetition Financing on a Secured,*

Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief [Docket No. 195] (the “Final DIP Order”).²

12. The Final DIP Order authorized the Debtors to, among other things, obtain senior, super-priority debtor-in-possession secured financing (the “DIP Facility”), pursuant to the DIP Credit Agreement by and among Ryckman Creek Resources, LLC, as Borrower, the other Lenders party thereto from time to time (such Lenders, the “DIP Lenders”), and ING Capital LLC (“ING”), as administrative agent (the “DIP Agent”).³

13. Over the course of the Chapter 11 Case, the Debtors and the DIP Lenders have entered into several non-material modifications to the DIP Credit Agreement, including to extend certain milestones. The Final DIP Order further provides that “Ryckman and the DIP Agent may implement material modifications of the DIP Loan Documents on at least seven (7) calendar days prior notice to the [Creditors’] Committee and the U.S. Trustee, and any proposed material modification that is objected to within such period shall only be implemented to the extent approved by this Court.” Final DIP Order, ¶ 36. The Debtors have provided seven calendar days prior notice to the Creditors’ Committee and the U.S. Trustee, and file this Motion out an abundance of caution, in the event that further notice may be required.

III. The Additional Financing

14. In recent weeks, the Debtors have received several expressions of interest from potential sources of exit financing or other investment in the Debtors. Additionally, the Debtors require funding to operate their business and fund the Chapter 11 Cases as they continue to evaluate all avenues of potential investment and work toward confirmation of a plan of

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Final DIP Order or the DIP Credit Agreement, as applicable.

³ DIP Order ¶ 1.

reorganization (the “Plan”) and emergence from chapter 11. As described above, the Amendment, when effective, would modify the DIP Credit Agreement⁴ to provide for up to an additional \$10,000,000 of secured, postpetition loans (the “Additional Financing”), which amount shall include the amount under the Interim Bridge Financing, by increasing the Commitment of each of the Supplemental DIP Lenders as set forth in Annex A(3) to Exhibit A of the Amendment. Except as explicitly set forth in the Supplemental Orders, the provisions of the Final DIP Order and the DIP Loan Documents shall remain in full force and effect.

15. The Supplemental DIP Lenders have proposed to provide the Additional Financing, subject to credit approval and other terms and conditions set forth in the Amendment. Certain of the key modifications to the DIP Credit Agreement under the terms of the Amendment include: (i) a \$10,000,000 Commitment by the Supplemental DIP Lenders for the Additional Financing; (ii) a \$2,000,000 Commitment for Interim Bridge Financing; (iii) interest on the Additional Financing at LIBOR plus ten percent (10%); (iv) extension of the maturity date to August 15, 2017; (v) a 5.00% fee due and payable in cash on the maturity date; and (vi) certain milestones leading to the effective date of the Plan.⁵

16. The Debtors have received expressions of interest from several third parties regarding exit financing or other potential investments in the Company. Such exit financing or other investment is necessary for the Debtors’ successful emergence from chapter 11. In that regard, the Debtors intend to engage an investment bank to pursue all potential investment alternatives. Accordingly, the Amendment provides certain milestones, which allow

⁴ As used herein, the “Amended DIP Credit Agreement” shall refer to the marked copy of the DIP Credit Agreement attached as Exhibit A to the Amendment.

⁵ The terms outlined in this paragraph are provided only as an overview of key modifications. In accordance with the Bankruptcy Rules and Local Bankruptcy Rules, the Debtors have provided a concise summary of the terms of the Amendment below.

the Debtors to consider all available alternatives and determine the path that is in the best interest of all parties in interest.

RELIEF REQUESTED

17. By this Motion, the Debtors respectfully request that the Court enter the Interim Supplemental Order and the Final Supplemental Order, which:

- (a) authorize the Debtors to obtain the Interim Bridge Financing on a secured, superpriority basis, in the amount of \$2,000,000, as provided by the Amendment, to be made available upon entry of the Interim Supplemental Order, and subject to the terms and conditions set forth in the Interim Supplemental Order, the Final DIP Order, and the DIP Loan Documents;
- (b) authorize the Debtors to enter into the Amendment in connection with the Additional Financing, subject to the terms and conditions of the Final DIP Order and the DIP Loan Documents, except as explicitly modified by the Supplemental Orders and the Amendment;
- (c) continue to provide adequate protection to the Prepetition Lenders with respect to any diminution in the value of their interests in the Prepetition Collateral resulting from the priming liens and security interests originally granted by the Final DIP Order;
- (d) continue to provide adequate protection to the Purported Lienholders with respect to any diminution in value of their Purported Liens, subject to the terms and conditions of the Final DIP Order;
- (e) extend the liens, security interests, and superpriority claims of the DIP Lenders to cover the Supplemental DIP Lenders with respect to any Advances made pursuant to the Interim Bridge Financing and the Additional Financing, giving such Additional Financing Advances the same priority in payment and security as set forth in the Final DIP Order in respect of the Advances made pursuant to the Closing Date Commitment and Blocked Commitment, subject to any exceptions noted in the Final DIP Order, in order to secure the Debtors' obligations under the Additional Financing;
- (f) schedule a hearing (the "Final Hearing"), pursuant to Bankruptcy Rule 4001(c)(2), to consider entry of the Final Supplemental Order granting the relief requested in this Motion on a final basis; and
- (g) grant related relief.

COMPLIANCE WITH LOCAL BANKRUPTCY RULE 4001-2

18. Local Bankruptcy Rule 4001-2(a)(1) requires that certain provisions contained in the financing documents and/or form of order be highlighted, and that the Debtors must provide justification for the inclusion of such provisions. The Debtors highlighted such provisions in the DIP Motions. The Debtors believe that no other provisions relating to the Additional Financing implicate the requirements of Local Bankruptcy Rule 4001-2.

CONCISE SUMMARY OF THE ADDITIONAL FINANCING TERMS⁶

19. In accordance with Bankruptcy Rules 5001(c) and (d), the following summarizes the significant terms of the Amendment and the Supplemental Orders. Included in this summary is a description of each of the provisions required to be highlighted by Local Bankruptcy Rule 4001-2.⁷ The Debtors believe that the following provisions are justified and necessary in the context and circumstances of these cases.

Lenders <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Certain of the DIP Lenders that are party to the Amendment. <u>See</u> Amendment, Recitals.
Agent <i>Bankruptcy Rule 4001(c)(1)(B)</i>	ING Capital, LLC <u>See</u> Amendment, Recitals.

⁶ This summary of the Additional Financing under the Amendment, the DIP Credit Agreement, and the proposed Supplemental Orders is provided for the benefit of the Court and other parties in interest. A copy of the Amendment is attached hereto as Exhibit A and incorporated herein by reference. To the extent there are any conflicts between this summary and the Amendment, the DIP Credit Agreement, the Final DIP Order, and the proposed Supplemental Orders, the terms of the Final DIP Order, except as expressly modified by the Supplemental Orders, shall govern. Capitalized terms used in this summary but not otherwise defined herein shall have the meanings set forth in the Amendment, the DIP Credit Agreement, and the Supplemental Orders, as applicable.

⁷ Further summaries of the terms and provisions of the DIP Facility are provided in the DIP Motions.

Borrowers <i>Bankruptcy Rule</i> 4001(c)(1)(B)	The Debtors. <u>See</u> Amendment, Recitals.
Commitment <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)	\$10,000,000. <u>See</u> Amended DIP Credit Agreement, Art. II, Annex A(3). Notwithstanding the allocation of Additional Financing commitments among the Supplemental DIP Lenders initially proposed in the Amendment, the allocation of Additional Financing commitments may, upon the written consent of the Debtors and each of the Supplemental DIP Lenders, be re-apportioned among the Supplemental DIP Lenders in any manner that the Supplemental DIP lenders deem appropriate or desirable, without further notice or order of the Court. <u>See</u> Supplemental Orders, ¶ 15.
Term/Maturity <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)	The Maturity Date is the earlier to occur of (a) effective date of a plan of reorganization in the Chapter 11 Case and (b) August 15, 2017. <u>See</u> Amended DIP Credit Agreement § 1.01.
Interest Rates <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)	The interest rate on the Additional Financing is LIBOR Rate plus ten percent (10%); provided that up to five percent (5%) of interest payable with respect to Loans made in connection with the Supplemental Commitments may be paid in kind by capitalizing the amount of in-kind interest on the principal amount of Loans made with respect to the Supplemental Commitments then outstanding (i.e., increasing the outstanding principal amount thereof). <u>See</u> Amended DIP Credit Agreement § 3.02(a).
Expenses and Fees <i>Bankruptcy Rule</i> 4001(c)(1)(B)	The Borrowers agree to pay a 5.00% DIP Fee calculated on the aggregate amount of each Lender’s respective Supplemental Commitments in effect on the Fifth Amendment Effective Date, due and payable in cash on the Maturity Date but which shall be fully earned by the Lenders on the Fifth Amendment Effective Date (and once paid shall be non-refundable). <u>See</u> Amended DIP Credit Agreement § 2.03(b).
Liens and Priorities Other Than Adequate Protection Liens <i>Bankruptcy Rule</i> 4001(c)(1)(B)(i), (xi), <i>Local Bankruptcy Rules</i> 4001-2(a)(i)(A), D), (G), and 4001-2(a)(ii)	The Additional Financing ranks <u>pari passu</u> in right of payment and of security with the Advances made pursuant to the Closing Date Commitment and the Blocked Commitment. <u>Superpriority Claims.</u> Pursuant to section 364(c)(1) of the Bankruptcy Code, all obligations under the Additional Financing shall be treated as superpriority claims. <u>Liens.</u> The Additional Financing will be secured by the DIP Liens (as defined in the Final DIP Order), as extended by the Supplemental Orders to cover the Additional Financing. <u>See</u> Final DIP Order ¶¶ 7-8; Interim Supplemental Order ¶ 8; Final Supplemental Order 7.

<p>Adequate Protection <i>Bankruptcy Rule</i> 4001(b)(1)(B)(iv), (c)(1)(B)(ii)</p>	<p>Adequate Protection granted pursuant to the Final DIP Order, including the liens and claims granted thereunder, remains in full force and effect in all respects as adequate protection for the Additional Financing.</p> <p><u>See</u> Final DIP Order ¶ 10, 39; Interim Supplemental Order ¶ 10-11; Final Supplemental Order 9-10.</p>
<p>Use of Proceeds <i>Bankruptcy Rules</i> 4001(b)(1)(B), (c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)</p>	<p>The proceeds of the Additional Financing are governed by the same provisions that govern the use of proceeds under the DIP Facility.</p> <p><u>See</u> DIP Credit Agreement § 9.08.</p>
<p>Borrowing Conditions <i>Bankruptcy Rule</i> 4001(c)(1)(B) <i>Local Bankruptcy Rule</i> 4001-2(a)(ii)</p>	<p>In addition to the borrowing conditions set forth in the DIP Credit Agreement, the effectiveness of the Amendment against the Supplemental DIP Lenders is conditioned upon the satisfaction of the following conditions precedent (unless waived by the Supplemental DIP Lenders in writing): (a) Administrative Agent shall have received an executed copy of the Amendment duly executed by Borrower, and Administrative Agent and the Lenders shall have duly executed and delivered to Borrower a copy of the Amendment; (b) Administrative Agent shall have received evidence that all proceedings and authorizations necessary to authorize the execution, delivery and performance of the Amendment and the transactions contemplated thereby have been taken or received; (c) All representations and warranties of the Borrower contained in the Senior Secured DIP Agreement shall be true and correct in all material respects (except that (i) for those representations and warranties already qualified by concepts of materiality or knowledge, those representations and warranties shall be true and correct in all respects and (ii) for those representations and warranties that relate solely to an earlier date, those representations and warranties shall be true and correct in all material respects as of such earlier date); (d) No Event of Default or Default shall have occurred and be continuing; (e) Borrower shall pay on demand all reasonable fees and expenses incurred by Administrative Agent in connection with this Agreement and the other Senior Secured DIP Agreement, including, but not limited to, the reasonable fees and expenses of Administrative Agent's counsel; (f) The Bankruptcy Court shall have entered an Interim Supplemental DIP Order with respect to the Supplemental Commitments; and (g) Borrower shall have engaged the services of an investment bank satisfactory to Agent.</p> <p><u>See</u> Amendment § 3.1.</p>
<p>Indemnification <i>Bankruptcy Rule</i> 4001(c)(1)(B)(ix)</p>	<p>The Amendment is governed by the same Indemnification provisions that govern under the DIP Credit Agreement.</p> <p><u>See</u> DIP Credit Agreement § 5.04; 13.03, Interim Supplemental Order ¶ 10-11; Final Supplemental Order 9-10.</p>

BASIS FOR RELIEF

20. The continued success of the Debtors' business and reorganization efforts relies on their ability to obtain the Additional Financing. Absent access to this financing, the Debtors will not have the necessary liquidity to continue their business, including to fund the costs of working capital obligations, operating expenses, and expenses related to administration of the Chapter 11 Cases. The Debtors' forecasted liquidity needs for the period between March 11, 2017 through April 28, 2017 are set forth in detail in the budget attached hereto as Exhibit C.

21. The Debtors are obtaining the Additional Financing on the same terms and secured by the same liens as commitments already approved by this Court pursuant to the Final DIP Order. The terms of the Additional Financing are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. Moreover, the Debtors are unable to obtain adequate unsecured credit allowable as an unsecured claim or superpriority administrative expense because all of the Debtors' assets are subject to liens.⁸ At this stage in the Chapter 11 Cases, the Debtors' most realistic option for additional financing was the DIP Lenders. Indeed, because they are the lenders under the DIP Credit Agreement, the DIP Lenders would need to consent should the Debtors propose alternative financing and priming. Accordingly, the Debtors submit that entry into the Amendment is in the best interest of the Debtors' estates and their creditors, and the relief requested herein should be granted.

⁸ See Final DIP Order, ¶ 7.

APPLICABLE AUTHORITY

I. THE ADDITIONAL FINANCING SHOULD BE APPROVED

I. The Additional Financing is Necessary to Preserve the Value of the Debtors' Estates and is in the Best Interest of Creditors.

22. For the reasons set forth herein, the Debtors have an immediate need for additional postpetition financing to continue operating their business in the ordinary course and preserve the value of their assets. Without the Additional Financing, the Debtors will not be able to fund the day-to-day operating expenses of their business necessary to maintain the value of the Debtors assets, including payment of wages to employees necessary to sustain the going concern value of the Debtors' assets and funds required to satisfy other general corporate and working capital requirements and fund the administrative costs of the Chapter 11 Cases. Indeed, absent sufficient funds to support the Debtors' operations, the value of the Debtors' assets and operations will quickly erode, to the detriment of the Debtors' estates and stakeholders. See In re Farmland Indus., Inc., 294 B.R. 855, 885 (Bankr. W.D. Mo. 2003) (approving postpetition financing and noting that “[w]ithout the continued financing, the Debtors would likely be forced into a Chapter 7 or 11 liquidation, to the detriment of all creditors”).

23. The Debtors' time in chapter 11 has extended beyond their initial expectation when they entered into the DIP Facility as a result of the multiple issues that have been, or must be, resolved prior to confirmation; including negotiating resolutions with certain key customers, litigating adversary cases with multiple purported lienholders, and working to obtain exit financing. Upon entry of the Interim Supplemental Order, the Interim Bridge Financing will authorize the Debtors to obtain \$2,000,000 in liquidity, with an additional \$8,000,000 authorized upon entry of the Final Supplemental Order. The Additional Financing will allow the Debtors and the DIP Lenders to continue to evaluate additional options with

respect to future financing or other investments in the Debtors, while allowing the Debtors to continue to operate their business and preserve the value of their estates.

24. The Debtors and their advisors have determined that this Additional Financing is necessary to allow the Debtors time to resolve the outstanding issues, negotiate the terms of their exit financing, and move toward emergence. Thus, the Debtors submit that the Additional Financing is in the best interest of the Debtors' estates, creditors, and all other stakeholders, and therefore the Debtors should be granted the relief requested herein.

II. The Debtors Should Be Authorized to Obtain the Additional Financing on a Senior Secured Priming and Superpriority Basis Pursuant to Bankruptcy Code sections 364(c) and 364(d).

25. Bankruptcy Code section 364 allows a debtor to obtain (a) unsecured credit in the ordinary course of business, (b) unsecured credit outside the ordinary course of business, (c) credit with specialized priority or with certain security interests, and (d) secured credit by granting a senior or pari passu lien on already encumbered property. In other words, section 364 is "structured with an escalating series of inducements . . ." that may be offered to attract postpetition financing. Sapir v. CPQ Colorchrome Corp. (In re Photo Promotion Assocs., Inc.), 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988), aff'd, 881 F.2d 6 (2d Cir. 1989). Accordingly, if a debtor cannot obtain postpetition financing on an unsecured basis under sections 364(a) and (b), the bankruptcy court may authorize a debtor to obtain postpetition financing on a superpriority, administrative expense basis pursuant to Bankruptcy Code section 364(c), secured by a senior lien on unencumbered property or secured by a junior lien on encumbered property.

26. Section 364(c) Superpriority Claims. Courts consider various factors in determining whether a debtor may obtain postpetition financing under section 364(c) of the Bankruptcy Code, including whether (a) the debtor is unable to obtain secured credit under section 364(b); (b) the credit transaction is necessary to preserve the assets of the estate; (c) the

terms of the transaction are fair, reasonable, and adequate given the circumstances of the debtor-borrower and the proposed lender; (d) entry into the financing constitutes an exercise of the debtor's sound and reasonable business judgment; and (e) the financing was negotiated in good faith and at arm's length between the debtor and the lender. In re Farmland Indus., Inc., 294 B.R. at 879-81; see also In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying factors 1-3).

27. To satisfy the requirements of Bankruptcy Code section 364(c), a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." Id. When few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); see also In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

28. The Debtors have been operating in chapter 11 for over a year. Due to this fact, coupled with the liens and security interests on all of the Debtors' assets, including both those that existed prepetition and those that were granted by this Court pursuant to the Final DIP Order, the Debtors are unable to procure sufficient additional debtor in possession financing in

the form of either unsecured credit under Bankruptcy Code sections 364(a) or (b), solely in exchange for the grant of an administrative expense or superpriority administrative expense claim or on a junior lien basis under Bankruptcy Code section 364(c). Given the Debtors' current capital structure and already extensively negotiated and court-approved DIP Facility, the only prudent path was to seek the Additional Financing from its existing creditors on the terms described herein. Furthermore, any proposal other than one supported by the DIP Lenders or one that paid in full the outstanding balance of the Obligations under the DIP Credit Agreement, would have likely involved added costs and risks associated with non-consensual priming litigation and would have hindered negotiations with the DIP Lenders regarding any potential exit financing. As observed by Judge Peck, "[t]hat which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict." In re Ion Media, 2009 WL 2902568 (Bankr. S.D.N.Y. 2009).

29. Based on the foregoing, the Debtors believe that they would not have been able to obtain debtor in possession financing on more favorable terms from other sources. See, e.g., Bray v. Shenandoah Fed. Savs. & Loan Ass'n, 789 F.2d at 1088 (Section 364 "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable."). For the reasons discussed herein, the Debtors satisfy the standards required to obtain the Additional Financing on a secured, superpriority lien basis under Bankruptcy Code section 364(c).

30. Section 364(d) Priming Liens. If the incentives available under Bankruptcy Code section 364(c) are insufficient to attract post-petition financing, a bankruptcy court may authorize post-petition credit under Bankruptcy Code section 364(d) secured by a senior or pari passu lien on encumbered property (i.e., a "priming" lien) without consent from the

affected lienholders if (a) the debtor cannot otherwise obtain credit and (b) the interests of the existing lienholders are adequately protected. See 11 U.S.C. § 364(d)(1); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992); In re Aqua Assocs., 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (listing the above factors and also requiring that the “credit transaction” be “necessary to preserve assets of the estate”). As set forth herein, the Additional Financing satisfies both factors.

31. First, as set forth above, the Debtors do not believe that they would have been able to obtain credit on more favorable terms, not only due to the Debtors’ position in the Chapter 11 Cases, but also due to the existing DIP Liens and Prepetition Liens already encumbering all of the Debtors’ assets.

32. Second, a debtor may obtain postpetition credit that is “secured by a senior or equal lien on property of the estate that is subject to a lien only if” the debtor, among other things, provides “adequate protection” to those parties whose liens are primed. See 11 U.S.C. § 364(d)(1)(B). Adequate protection is evaluated on a case-by-case basis and may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. See In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“[T]he determination of adequate protection is a fact specific inquiry . . . left to the vagaries of each case”) (citation and quotation omitted).

33. The liens and other protections afforded to the Supplemental DIP Lenders and the adequate assurance offered to the Prepetition Lenders are the same protections approved by this Court through the Final DIP Order. As described in the DIP Motions, the Final DIP Order provides a multi-faceted package of adequate protection to ensure that the Prepetition Lenders being primed by the DIP Facility were adequately protected to the extent of any

diminution in the value of their respective Prepetition Collateral. Further, as more fully set forth in paragraph 39 of the Final DIP Order, to the extent any Purported Lienholder maintains an allowed secured claim under Bankruptcy Code section 506(a)(1), and the value of such Purported Lien has been diminished by the terms of the Supplemental Orders, the Purported Lienholder will be entitled to the Purported Lienholders Replacement Liens with respect to such diminution, subject to all the terms and conditions of the Final DIP Order.

34. The Debtors do not believe that any existing creditors are harmed by such priming. Moreover, to the extent that any creditors are harmed by such priming, they are adequately protected under the terms set forth in the Final DIP Order. That adequate protection package was approved under the Final DIP Order, and remains in full force and effect. By this Motion, the Debtors request that this Court approve the extension of the priming liens it already authorized to serve as collateral for the Additional Financing.

III. The Terms of the Additional Financing Are Fair, Reasonable, Appropriate, and Reflects the Debtors' Sound Business Judgment

35. The terms and conditions of the Additional Financing are fair, reasonable, and appropriate under the circumstances, and were negotiated by the parties in good faith and at arm's length. The DIP Facility and DIP Credit Agreement approved by this Court pursuant to the Final DIP Order were the product of an extensive marketing and negotiation process, as described in detail in the DIP Motion. In connection with that process, the DIP Lenders required that the Debtors grant the liens and superpriority claims described in the DIP Loan Documents and approved by the Final DIP Order. In addition, the Supplemental DIP Lenders agreed to provide the Debtors with the Additional Financing, but only on the same terms as the existing DIP Credit Agreement and secured by the same DIP Collateral as the DIP Facility. The Additional Financing will provide the Debtors with the liquidity they need to operate their

business in the coming months, which will preserve the value of their assets and permit them to work toward confirmation of the Plan and emerge from chapter 11 in the near term. After thorough analysis, the Debtors and their advisors have concluded that the terms of the Additional Financing are reasonable and appropriate under the circumstances.

36. Bankruptcy courts routinely defer to a debtor's business judgment in considering whether to approve the debtor's request to obtain postpetition financing. See, e.g., Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (quoting order approving post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); In re Ames Dep't Stores, Inc., 115 B.R. at 40 (The court should defer to debtor's "reasonable business judgment . . . so long as the financing agreement does not . . . leverage the bankruptcy process" and its purpose is to benefit the estate rather than another party-in-interest.).

37. As this Court found with respect to the DIP Loan Documents, the Debtors exercised their reasonable business judgment in determining that the Additional Financing provided pursuant to the Amendment is the best financing option available under the present circumstances, and the Debtors have satisfied the legal requirements to incur the Additional Financing on the terms and conditions set forth in the DIP Credit Agreement. The Debtors approached several potential sources of third-party debtor-in-possession financing, or parties that might be willing to provide present financing as part of an exit facility. The Amendment represents the most favorable terms under which the Debtors could obtain the Additional Financing, while preserving value for existing stakeholders and allowing the Debtors continue to pursue alternate sources of exit financing or other investment with interested parties.

38. The Debtors require additional liquidity to operate their business. The alternative in this case is “to force the debtors to close down their operations and thus doom any effort of reorganization which will hopefully extract the maximum value of the assets involved to the benefit of all classes of creditors and other constituencies involved in this case.” In re Dynaco Corp., 162 B.R. 389, 396 (Bankr. D. N.H. 1993). As debtors in possession, the Debtors have a fiduciary duty to protect and maximize their estates’ assets. See, e.g., Burtch v. Ganz (In re Mushroom Transp. Co.), 382 F.3d 325, 339 (3d Cir. 2004). The Debtors require the Additional Financing to allow them to continue operations, while resolving the remaining roadblocks to confirmation of the Plan.

39. This Court has already found that the DIP Loan Documents contain terms that are fair, reasonable, and in the best interests of the Debtors and their estates. Except as expressly set forth in the Amendment or the Supplemental Orders, the terms of the DIP Facility remain in full force and effect, and the terms of the Additional Financing remain subject to the Final DIP Order and the DIP Loan Documents. Moreover, the Debtors considered the fee and interest provisions described above when determining, in their sound business judgement, that the Additional Financing constitutes the best terms on which the Debtors could obtain the necessary financing. For the reasons set forth herein, the Debtors respectfully submits that the terms of the Additional Financing are fair, reasonable, appropriate, and an exercise of the Debtors’ sound business judgment.

II. THE SUPPLEMENTAL DIP LENDERS ARE ENTITLED TO THE PROTECTIONS UNDER BANKRUPTCY CODE SECTION 364(e)

40. Bankruptcy Code section 364(e), which protects a good faith lender’s right to collect on loans extended to a debtor and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on

appeal, was designed to “encourage lenders to extend credit to debtors by eliminating the risk that any lien securing the loan will be modified on appeal.” Keltic Fin. Partners, LP v. Foreside Mgmt. Co. (In re Foreside Mgmt. Co.), 402 B.R. 446, 451 (B.A.P. 1st Cir. 2009) (citing Shapiro v. Saybrook Mfg. Co. (In re Saybrook Mfg. Co.), 963 F.2d 1490, 1493 (11th Cir. 1992)). See also White Rose Food v. General Trading (In re Clinton St. Food Corp.), 170 B.R. 216, 220 (S.D.N.Y. 1994) (noting that section 364(e)’s purpose “is to overcome parties’ reluctance to lend to a bankrupt firm . . .”); Fleet Nat’l Bank v. Doorcrafters (In re N. Atl. Millwork Corp.), 155 B.R. 271, 279 (Bankr. D. Mass. 1993) (“The purpose of Section 364(e) is to allow good-faith lenders to rely upon conditions at the time they extend credit and to encourage lenders to lend to bankruptcy entities.”).

41. The Debtors believe that the terms and conditions of the Additional Financing are fair and reasonable and are the best possible terms on which the Debtors could obtain additional financing. The terms and conditions relating to the Additional Financing, including the terms and conditions of the Amendment, were negotiated in good faith and at arm’s length with all parties represented by experienced counsel. Accordingly, the Supplemental DIP Lenders should be provided with the benefit and protection of Bankruptcy Code section 364(e), such that if any of the provisions of the Additional Financing are later modified, vacated, stayed, or terminated by subsequent order of this or any other Court, the Supplemental DIP Lenders will be fully protected with respect to any amounts previously disbursed.

III. INTERIM APPROVAL SHOULD BE GRANTED AND THE FINAL HEARING SCHEDULED

42. Bankruptcy Rule 4001(c) provides that:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to

the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

43. Generally, courts find “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize. See In re Ames Dep’t Stores, Inc., 115 B.R. at 36, n.2. Approval of the Additional Financing on an interim basis under Bankruptcy Rule 4001(c)(2) is left to the discretion of the court as informed by the facts of each case. In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions, and a debtor should be entitled to borrow those amounts that it believes prudent in the operation of its business. See In re Trans World Airlines, Inc., 163 B.R. at 974; In re Ames Dep’t Stores, Inc., 115 B.R. at 40. After the 14-day period, the request for financing is not limited to those amounts necessary to prevent the destruction of the debtor’s business, and the debtor is entitled to borrow those amounts that it believes are prudent to the operation of its business. In re Ames Dep’t Stores, Inc., 115 B.R. at 36.

44. The Debtors seek expedited approval of interim relief requested in this Motion in light of the immediate and irreparable harm that the Debtors’ estates will incur unless they obtain the financing necessary to sustain their business. Absent sufficient funds to support the Debtors’ operating business, the Debtors’ business and assets will quickly erode to the detriment of the Debtors’ estates and creditors, and the Debtors will not have ample liquidity to fund their operations. For the reasons set forth above, the Debtors submit that immediate approval of the Interim Bridge Financing is necessary to preserve the value of the Debtors’ estates for the benefit of their creditors and other parties-in-interest. Accordingly, the Debtors respectfully request that, pending the hearing on the Final Supplemental Order, the Interim Supplemental Order be approved in all respects and the terms and provisions of the Interim

Supplemental Order be implemented and deemed binding, and that, after the hearing on the Final Supplemental Order, the Supplemental Orders be approved in all respects and the terms and provisions of the Supplemental Orders be implemented and be deemed binding.

45. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that this Court set April 25, 2017 at 11:00 a.m. (Eastern) as the date for the Final Hearing, and set April 11, 2017 at 4:00 p.m. (Eastern) as the deadline for parties to file objections to the entry of the proposed Final Supplemental Order.

WAIVER OF STAY UNDER BANKRUPTCY RULES 4001(a)(3) AND 6004(h)

46. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 4001(a)(3), which provides that “[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise,” Fed. R. Bankr. P. 4001(a)(1), and Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in the Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that this Court waive the 14-day stays imposed by Bankruptcy Rules 4001(a)(3) and 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

47. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors’ prepetition secured lenders; (c) counsel to the agent for the Debtors’ postpetition secured lenders; (d) counsel for the

Creditors' Committee; (e) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in the Chapter 11 Cases; and (f) any such other party entitled to notice pursuant Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

NO PRIOR REQUEST

48. Although the Court has already entered the Final DIP Order, no previous request for the relief sought herein has been made to this Court or any other court.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

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

Dated: Wilmington, Delaware
March 15, 2017

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Sarah E. Pierce

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

Amendment

**FIFTH AMENDMENT TO
SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND
SECURITY AGREEMENT**

This Fifth Amendment to Senior Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement entered into as of March __, 2017 (this "Agreement") by and among RYCKMAN CREEK RESOURCES, LLC, a Delaware limited liability company and debtor-in-possession (the "Borrower"), each of the lenders that is a signatory to this Agreement identified as a "Lender" on the signature pages to this Agreement or that, pursuant Section 13.06(b) of the Senior Secured DIP Agreement (defined below), shall become a "Lender" under this Agreement (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", and, collectively, the "Lenders" as those terms are further defined in the Senior Secured DIP Agreement) and ING CAPITAL LLC ("ING Capital"), as the Administrative Agent for the Lenders.

WITNESSETH:

WHEREAS, Administrative Agent, the Lenders party thereto and Borrower entered into that certain Senior Secured, Super-Priority Debtor-in-Possession Credit and Security Agreement (as heretofore and as it may hereafter be amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Senior Secured DIP Agreement") dated as of March 24, 2016 and certain other DIP Financing Documents executed in connection therewith, pursuant to which Lenders have extended certain financial accommodations to Borrower;

WHEREAS, Borrower has requested that Administrative Agent and the Lenders make certain amendments to the Senior Secured DIP Agreement to, among other things, provide additional financing in aggregate principal amount not to exceed \$10,000,000; and

WHEREAS, Administrative Agent and the Lenders have agreed to such amendments upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Section 1 DEFINITIONS.

Capitalized terms used in this Agreement and not defined herein shall have the meanings ascribed to them in the Senior Secured DIP Agreement, as amended hereby, unless otherwise stated.

Section 2 AMENDMENTS TO SENIOR SECURED DIP AGREEMENT.

Subject to the satisfaction of the condition precedent to effectiveness set forth in Section 3 hereof, each party hereto agrees to amend the Senior Secured DIP Agreement as follows:

2.1 Amendments. Effective as of the date hereof, the Senior Secured DIP Agreement is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in the marked copy of the Senior Secured DIP Agreement attached hereto as Exhibit A hereto and made a part hereof for all purposes.

2.2 Amendment to Schedule 9.19. Schedule 9.19 to the Senior Secured DIP Agreement is hereby deleted and replaced with Exhibit B attached hereto.

Section 3 CONDITIONS PRECEDENT

3.1 Conditions Precedent to this Agreement. The effectiveness of this Agreement against Administrative Agent and Lenders is conditioned upon the satisfaction of the following conditions precedent (unless waived by Administrative Agent and the Lenders in writing). The determination as to whether each condition has been satisfied may be made in Administrative Agent's sole discretion.

(A) Administrative Agent shall have received an executed copy of this Agreement duly executed by Borrower, and Administrative Agent and the Lenders shall have duly executed and delivered to Borrower a copy of this Agreement.

(B) Administrative Agent shall have received evidence that all proceedings and authorizations necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby have been taken or received.

(C) All representations and warranties of the Borrower contained in the Senior Secured DIP Agreement shall be true and correct in all material respects (except that (i) for those representations and warranties already qualified by concepts of materiality or knowledge, those representations and warranties shall be true and correct in all respects and (ii) for those representations and warranties that relate solely to an earlier date, those representations and warranties shall be true and correct in all material respects as of such earlier date).

(D) No Event of Default or Default shall have occurred and be continuing.

(E) Borrower shall pay on demand all reasonable fees and expenses incurred by Administrative Agent in connection with this Agreement and the other Senior Secured DIP Agreement, including, but not limited to, the reasonable fees and expenses of Administrative Agent's counsel.

(F) The Bankruptcy Court shall have entered an Interim Supplemental DIP Order with respect to the Supplemental Commitments.

(G) Borrower shall have engaged the services of an investment bank satisfactory to Agent.

Section 4 RATIFICATIONS, REPRESENTATIONS AND WARRANTIES.

4.1 Ratification. Except as expressly modified and superseded by this Agreement, the terms and provisions of the Senior Secured DIP Agreement are ratified and confirmed and shall continue in full force and effect. Borrower, Administrative Agent and each Lender agrees that the Senior Secured DIP Agreement shall continue to be legal, valid, binding and enforceable in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability. Borrower further expressly acknowledges and agrees that each of Administrative Agent and Lenders have a valid, non-avoidable, enforceable and perfected security interest in and lien against each item of Collateral described in the Senior Secured DIP Agreement and that such security interest and lien secures the payment Obligations (whether now or hereafter advanced by Lenders) and the performance of all other obligations of a Borrower under the Senior Secured DIP Agreement. Nothing in this Agreement shall constitute a waiver by Administrative Agent or Lenders of any Default or Event of Default, or of any right, power or remedy available to Administrative Agent or Lenders under the Senior Secured DIP Agreement, whether any such defaults, rights, powers or remedies presently exist or arise in the future, except as specifically set forth herein.

4.2 General Representations and Warranties. Borrower hereby jointly and severally represents and warrants to Administrative Agent and Lenders that (a) the execution, delivery and performance of this Agreement and the Senior Secured DIP Agreement executed and/or delivered in connection herewith have been duly authorized by all requisite organizational action on the part of Borrower and will not violate the organizational documents of Borrower, contravene any material contractual restriction, any law, rule or regulation or court or administrative decree or order binding on or affecting Borrower which violation would have a Material Adverse Effect or result in, or require the creation or imposition of, any lien, security interest or encumbrance on any of the properties of the Borrower (other than Permitted Encumbrances); (b) this Agreement and the Senior Secured DIP Agreement executed and/or delivered in connection herewith have been duly executed and delivered by Borrower and are the legal, valid and binding obligation of Borrower, enforceable in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability; (c) Borrower is in full compliance with all covenants and agreements contained in the Senior Secured DIP Agreement; and (d) Borrower has not amended their organizational documents after the Closing Date.

Section 5 MISCELLANEOUS.

5.1 Survival. All representations, warranties or covenants made in the Senior Secured DIP Agreement or this Agreement, including, without limitation, any document furnished in connection with this Agreement, shall survive the execution and delivery of this Agreement and the Senior Secured DIP Agreement entered into in connection herewith, and no investigation by Administrative Agent or any Lender or any closing shall affect the

representations and warranties or the right of Administrative Agent or Lenders to rely upon them.

5.2 Limitation on Relationship between Parties. The relationship of Administrative Agent and Lenders, on the one hand, and the Borrower, on the other hand, has been and shall continue to be, at all times, that of creditor and debtor. Nothing contained in this Agreement, any instrument, document or agreement delivered in connection therewith or in the Senior Secured DIP Agreement shall be deemed or construed to create a fiduciary relationship between the parties.

5.3 Successors and Assigns; Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Administrative Agent, and no other Person shall have any right, benefit or interest under or because of the existence of this Agreement, except that the provisions of Section 5.11 of this Agreement shall inure to the benefit of the Released Parties.

5.4 No Waiver. Except as specifically set forth herein, nothing contained in this Agreement shall be construed as a waiver by Administrative Agent or any Lender of any covenant or provision of the Senior Secured DIP Agreement, the DIP Financing Documents, this Amendment, or of any other contract or instrument between Borrower and Administrative Agent or any Lender, and the failure of Administrative Agent or any Lender at any time or times hereafter to require strict performance by Borrower of any provision thereof shall not waive, affect or diminish any right of Administrative Agent or such Lender to thereafter demand strict compliance therewith. Administrative Agent and Lenders hereby reserve all rights granted under the Senior Secured DIP Agreement, the DIP Financing Documents, this Amendment and any other contract or instrument between any of them.

5.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement.

5.6 Costs and Expenses. Borrower agrees to pay on demand all reasonable costs and out-of-pocket expenses incurred by Administrative Agent in connection with the preparation, negotiation, execution and enforcement of this Agreement in accordance with Section 13.03 of the Senior Secured DIP Agreement.

5.7 Further Assurances. Borrower agrees to execute such other and further documents and instruments as Administrative Agent may reasonably request to implement the provisions of this Agreement and to perfect and protect the liens and security interests created by the Senior Secured DIP Agreement.

5.8 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS CHOSEN TO GOVERN THE SENIOR SECURED DIP AGREEMENT.

5.9 Counterparts. This Agreement may be executed by one or more of the parties hereto in any number of separate counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument, and all signature pages transmitted by electronic transmission shall be considered as original executed counterparts. Each party to this Agreement agrees that it will be bound by its own facsimile or electronic signature and that it accepts the facsimile or electronic signatures of each other party.

5.10 Headings. Paragraph and subparagraph titles, captions and headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

5.11 Final Agreement. THE SENIOR SECURED DIP AGREEMENT, AS AMENDED BY THIS AGREEMENT, REPRESENTS THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AGREEMENT IS EXECUTED. THE SENIOR SECURED DIP AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AGREEMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER, ADMINISTRATIVE AGENT, AND LENDERS.

5.12 Acknowledgment. The parties affirm and acknowledge that this Agreement constitutes a DIP Financing Document under the Senior Secured DIP Agreement and any reference to DIP Financing Document under the Senior Secured DIP Agreement contained in any notice, request, certificate or other document executed concurrently with or after the execution and delivery of this Agreement shall be deemed to include this Agreement unless the context shall otherwise specify.

[signature pages follow]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first written above.

RYCKMAN CREEK RESOURCES, LLC,
as Borrower

By: _____

Name: _____

Title: _____

(SIGNATURES CONTINUE ON THE NEXT PAGE)

ING CAPITAL LLC,
as Administrative Agent and Lender

By: _____

Name: Cheryl LaBelle
Title: Managing Director

By: _____

Name:
Title:

(SIGNATURES CONTINUE ON THE NEXT PAGE)

RB INTERNATIONAL FINANCE (USA) LLC,
as Lender

By: _____

Name: _____

Title: _____

(SIGNATURES CONTINUE ON THE NEXT PAGE)

SKANDINAVISKA ENSKILDA BANKEN AB,
as Lender

By: _____

Name: _____

Title: _____

EXHIBIT A

Senior Secured DIP Agreement

~~EXECUTION VERSION~~ CONFORMED COPY

**SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY
AGREEMENT**

Dated as of March 24, 2016

among

**RYCKMAN CREEK RESOURCES, LLC,
a debtor and a debtor-in-possession, as the Borrower**

**ING CAPITAL LLC,
as Administrative Agent**

and

**LENDERS PARTY TO THIS AGREEMENT
FROM TIME TO TIME**

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This SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this “Agreement”), dated as of March 24, 2016 is made by RYCKMAN CREEK RESOURCES, LLC, a Delaware limited liability company a debtor and a debtor-in-possession (the “Borrower”), each of the lenders that is a signatory to this Agreement identified as a “Lender” on the signature pages to this Agreement or that, pursuant Section 13.06(b) of this Agreement, shall become a “Lender” under this Agreement (individually, a “Lender” and, collectively, the “Lenders”) and ING CAPITAL LLC (“ING”), as the Administrative Agent for the Lenders.

RECITALS

A. The Borrower owns a partially-depleted oil and gas reservoir located in Uinta County, Wyoming (the “Ryckman Creek Field”) and the Borrower owns, subject to Permitted Liens (as defined below), all gas storage, gas processing, EOR Operations (as defined below) and all mineral rights (including natural gas liquids (“NGLs”) and remaining crude oil assets) and related compression, dehydration, nitrogen rejection, processing and transportation infrastructure (including existing and future gathering, interconnection and takeaway infrastructure), an approximately 60 MMSCFD cryogenic nitrogen rejection unit processing plant including 12,000 HP of compression to remove nitrogen remaining in the Ryckman Creek Field and to extract NGLs from the gas stream being withdrawn therefrom (the “NRU Plant”), and (I) the existing 22,000 HP compressor station and a 138 kV substation that the Borrower has previously acquired and (II) the four pipeline interconnects to the Kern River, Questar, Overthrust, and Ruby Pipelines which have been retrofitted for service (the “Canyon Creek Facility”) relating to the Ryckman Creek Field, (the “Initial Project”) and together with the NRU Project (as defined below, the “Project”).

B. Borrower is party to a certain Second Amended and Restated Credit Agreement, dated as of October 31, 2014, as amended from time to time (the “Pre-Petition Credit Agreement”), pursuant to which, among other things, the lenders party thereto (the “Pre-Petition Lenders”) made loans, advances and certain other financial accommodations to Borrower (collectively, the “Pre-Petition Liabilities”) for the purpose of, among other things, financing construction costs related to the development of the Project. As security for the payment and performance of Borrower’s obligations under or in connection with the Pre-Petition Credit Agreement and the Pre-Petition Liabilities, the Borrower granted to ING, as administrative agent, for the benefit of Pre-Petition Lenders, liens and security interests in substantially all of the Borrower’s assets (collectively, the “Pre-Petition Liens”).

C. On February 2, 2016 (the “Petition Date”), each of Borrower, Ryckman Creek Resources Holding Company LLC, Peregrine Rocky Mountains LLC, and Peregrine Midstream Partners LLC (collectively, “Debtors”) commenced chapter 11 cases (as jointly administered, collectively, the “Chapter 11 Case”) by filing voluntary petitions (collectively, the “Petition”) for relief under the Bankruptcy Code (as hereinafter defined), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

D. Debtors continue to operate their business and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

E. Debtors have requested that Lenders enter into certain financing arrangements with Borrower pursuant to Sections 364(c)(1), (c)(2), (c)(3) and (d) of the Bankruptcy Code for such purposes as are hereinafter described in this Agreement.

F. Debtors have been unable to obtain sufficient levels of unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense necessary to maintain and conduct their business.

G. Debtors have been unable to obtain secured credit on more favorable terms than under the terms and conditions provided in this Order herein.

H. To secure the Obligations (as defined below), the Borrower has agreed to provide to Administrative Agent, for the benefit of Lenders, among other things, security interests in all of its property and interests, whether real or personal, tangible or intangible, on the terms and conditions set forth herein and in accordance with Sections 364(c)(1), (c)(2), (c)(3) and (d) of the Bankruptcy Code.

J. Lenders are willing to make such loans and provide such financial accommodations to Borrower, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in the DIP Orders (as defined below) approving the proposed financing.

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS, INTERPRETIVE MATTERS, PRIOR DEFAULTS AND RELEASE

1.01 Certain Defined Terms. In addition to the terms defined in the preamble and in the recitals above, and unless otherwise specified in this Agreement, capitalized terms used in this Agreement shall have the meanings assigned to such terms below. Capitalized terms and other terms used in this Agreement shall be interpreted in accordance with Sections 1.02, 1.03 and 1.04, as applicable.

“Act” shall have the meaning assigned to such term in Section 13.23.

“Administrative Agent” shall mean ING Capital LLC, its successors and any replacement duly appointed pursuant to this Agreement, not in its individual capacity but solely in its capacity as administrative agent for the Lenders under this Agreement and the other DIP Financing Documents, as applicable.

“Administrative Questionnaire” shall have the meaning assigned to such term in Section 13.06(b)(ii)(D).

“Advance” shall mean an Advance made pursuant to Section 2.01 hereof.

“Advisors” means the Financial Advisor and any other professional, business, or technical advisors from time to time engaged by, or for the benefit of, the Administrative Agent in connection with the Project.

“Affiliate” with respect to any Person, shall mean any other Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person.

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

“Anti-Terrorism Law” shall have the meaning assigned to such term in Section 8.22(a).

“Applicable Lending Office” shall mean, for each Lender, the “Lending Office” of such Lender (or of an affiliate of such Lender) designated in the Administrative Questionnaire of such Lender or such other office of such Lender (or of an affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office for its Loans. Any Lender may from time to time change its “Applicable Lending Office” by delivering notice of such change to the Administrative Agent and the Borrower.

“Approved Budget Variance Report” means, as of any date, a current report that: (i) details the actual amount of cash receipts and disbursements for the prior week for each line item included in the then most recently approved Budget (on a cumulative basis), (ii) compares such actual cash receipts and disbursements (on a line item by line item basis) with the weekly and cumulative budgeted amounts for each such line item set forth in the Budget for such period, and (iii) provides an explanation for all variances between budgeted and actual amounts.

“Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 13.06), and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent.

“Authorized Officer” shall mean: (a) with respect to any Person that is a corporation, the chairman, president, chief executive officer, chief operating officer, vice president, chief financial officer, treasurer, assistant treasurer, attorney-in-fact, secretary or assistant secretary of such Person, (b) with respect to any Person that is a partnership, the chairman, president, chief executive officer, chief operating officer, vice president, chief financial officer, treasurer, assistant treasurer, attorney-in-fact, secretary or assistant secretary of such Person or a general partner of such Person (or the Authorized Officer (as determined in the same manner as this definition) of such general partner, or the manager or managing member of such general partner if such general partner is a limited liability company), (c) with respect to any Person that is a limited liability company, the manager, the managing member or a duly appointed officer of such Person (or the Authorized Officer (as determined in the same manner as this definition) of such manager or managing member), and (d) with respect to any other type of Person, a similar or equivalent Authorized Officer (as determined in the same manner as this definition) of such Person.

“Automatic Stay” shall mean the automatic stay imposed under Section 362 of the Bankruptcy Code.

“Availability Block” shall mean, (x) prior to the Release Trigger Date, the sum of the total Blocked Commitments; and (y) after the Release Trigger Date, \$0.00.

“Bankruptcy Code” shall mean Title 11 of the United States Code (as amended).

“Base Rate” shall mean, for any day, the highest of (a) the Prime Rate for such day, (b) 1/2 of 1% in excess of the Federal Funds Rate for such day, and (c) 1% in excess of the LIBOR Rate that would be applicable to a Loan made on such day in an amount equivalent to the Loan or Loans with respect to which the Base Rate is being calculated for a one month period. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Prime Rate, the Federal Funds Rate or the LIBOR Rate shall take effect at the time of such change in the Prime Rate, the Federal Funds Rate or the LIBOR Rate, as the case may be.

“Base Rate Loans” shall mean Loans that bear interest at a *per annum* rate equal to the greater of (a) the sum or (i) the Base Rate plus (ii) four and one-half percent (4.50%) and (b) eight percent (8%).

“Blocked Commitment” shall mean, for each Lender, the obligation of such Lender to make Advances, subject to the Availability Block, in an aggregate principal and/or face amount not to exceed the Blocked Commitment amount set forth opposite such Lender’s name on Appendix A(1) attached hereto.

“Board” shall mean the Board of Governors of the Federal Reserve System.

“Borrower” shall have the meaning assigned to such term in the preamble to this Agreement.

“Borrower’s Knowledge” shall mean the actual knowledge of the chief executive officer, the chief financial officer, the chief legal officer, the chief accounting officer, the vice president of project development, the vice president of project management and the chief commercial officer, in each case, of the Borrower, Holdco, or Peregrine.

“Borrowing” shall mean the making of any Loan by the Lenders to the Borrower.

“Bridge Facility” shall mean the senior secured, super-priority debtor-in-possession bridge facility heretofore provided to Borrower by ING as set forth in the Ryckman Creek Resources, LLC Terms and Conditions Proposed Senior Secured, Super-Priority Debtor-in-Possession Bridge Facility.

“Budget” shall mean a detailed ~~rolling thirteen week~~ consolidated cash flow budget for the period commencing on the Fifth Amendment Effective Date through the Maturity Date hereof satisfactory to Agent in all respects prepared by the Borrower.

“Business Day” shall mean any day on which commercial banks are not authorized or required to be closed in New York, New York, and which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

“Canyon Creek Facility” shall have the meaning assigned to such term in Recital A.

“Capital Expenditures” shall mean, for any period, the sum of the aggregate amount of all expenditures of the Borrower for fixed or capital assets made during such period that, in accordance with GAAP, would be classified as capital expenditures.

“Capital Lease Obligations” shall mean, for any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) Property, which obligations are required to be classified as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Carve-Out” shall have the meaning given to such term in the DIP Orders.

“Carve-Out Reserve” shall mean on any date of determination thereof a reserve established by Lender in its credit judgment to cover the amount of the Carve-Out.

“Cash Flow” shall mean, for any period, the sum of the following, without duplication: (a) all cash received by the Borrower from the storage of natural gas, the sale of NGLs or oil or the operation of the Project during such period, (b) any other operating revenue received by the Borrower during such period, (c) all interest and investment earnings paid to the Borrower or paid into a Pledged Account in respect of the amounts on deposit in the Pledged Accounts during such period, if any, (d) all funds paid to the Borrower relating to the Project from any Government Authority as grants, loans, Tax credits or otherwise, (e) all cash paid to Borrower during such period under any insurance policy as proceeds of (i) business interruption insurance, or (ii) casualty or property insurance, (f) Net Sales Proceeds from Ordinary Course Obsolescence Dispositions, and (g) all other cash paid to the Borrower during such period, including without limitation, any Litigation Proceeds; *provided that* Cash Flow shall not include (i) proceeds of Indebtedness, proceeds of equity issuances (including any capital contributions), (ii) any funds remaining in the Collection Account after the application of funds pursuant to the terms hereof; provided that, any item which constitutes Cash Flow when deposited in the Collection Account shall

continue to be Cash Flow while in the Collection Account, or (iii) any cash flow from financing activities in accordance with GAAP.

“Change in Control” shall mean any transaction or series of related transactions (including any merger or consolidation) or event, the result of which is any of the following: (a) Investor shall fail to own, directly or indirectly, beneficially and of record, ownership interests representing at least a majority of the aggregate ordinary voting power and at least a majority of the aggregate equity value represented by the issued and outstanding ownership interests in each of Peregrine, PRM, Holdco and the Borrower (other than the Preferred Units) free and clear of all liens (other than Permitted Liens of the types permitted by Sections 9.02(b), 9.02(g) or 9.02(i)), or (b) Investor shall fail to own, directly or indirectly, beneficially and of record, the ownership interests in each of Peregrine, PRM, Holdco, or the Borrower (other than the Preferred Units) that Investor owned on the Effective Date or, after the acquisition thereof, that the Investor acquires after the Effective Date, free and clear of all Liens (other than Permitted Liens of the types permitted by Sections 9.02(b), 9.02(g) or 9.02(i)).

“Change in Law” shall mean, with respect to any Lender (or its Applicable Lending Office), the occurrence after the date of the execution and delivery of this Agreement of the following events: (a) the adoption of any applicable Government Rule, (b) any change in any applicable Government Rule (including Regulation D) or in the interpretation or administration of any Government Rule (including Regulation D) by any Government Authority charged with its interpretation or administration or (c) the adoption or making of any interpretation, directive, guideline, policy or request applying to a class of banks, lenders or other financial institutions including such Lender of or under any Government Rule or in the interpretation or administration of any Government Rule (including Regulation D) (whether or not having the force of law and whether or not failure to comply would be unlawful, but with respect to which similarly situated banks, lenders or other financial institutions generally comply) by any Government Authority charged with its interpretation or administration; *provided that* notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any United States regulatory authorities, in any case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change in Management” shall mean any changes in the Chief Executive Officer, Chief Financial Officer, or Chief Commercial Officer, without the prior written consent of the Administrative Agent, unless such vacancies are promptly filled with reasonably qualified replacements, after consultation with the Administrative Agent.

“Chapter 11 Case” shall have the meaning assigned to such term in Recital C.

“Closing Date” shall mean March 24, 2016.

“Closing Date Commitment” shall mean, for each Lender, the obligation of such Lender to make Advances in an aggregate principal and/or face amount not to exceed the Closing Date Commitment amount set forth opposite such Lender’s name on Appendix A(2) attached hereto.

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

“Collateral” shall mean, collectively, all present and future accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights and tax refunds, in each case together with all Proceeds

thereof. However, the Collateral shall not include Proceeds of avoidance actions created under Chapter 5 of the Bankruptcy Code.

“Collateral Securities Accounts” shall have the meaning assigned to such term in the Disbursement Agreement.

“Collection Account” shall have the meaning assigned to such term in the Disbursement Agreement.

“Commitment” shall mean, for each Lender, the obligation of such Lender to make Advances in an aggregate principal and/or face amount not to exceed its Supplemental Commitment, Blocked Commitment and/or Closing Date Commitment, as applicable.

“Committee” shall mean any statutory committee appointed in the Chapter 11 Case.

“Communications” shall have the meaning assigned to such term in Section 13.21(a).

“Condemnation” shall mean any taking, seizure, condemnation, confiscation or requisition (including severance damage) of Property by or as authorized by any Government Authority, by eminent domain or by inverse condemnation or for any public or quasi-public use under any Government Rule.

“Connection Income Taxes” shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Contest” shall mean, with respect to any Person, with respect to any material Taxes or any material Lien imposed on Property of such Person (or the related underlying claim for labor, material, supplies or services) by any Government Authority for Taxes or with respect to obligations under ERISA or Mechanics’ Liens (each, for purposes of this definition, a “Subject Claim”), a contest of the amount, validity or application, in whole or in part, of such Subject Claim pursued in good faith and by appropriate legal, administrative or other proceedings diligently conducted so long as: (a) adequate reserves have been established with respect to such Subject Claim in accordance with GAAP, (b) during the period of such contest the enforcement of such Subject Claim is effectively stayed and any Lien (including any inchoate Lien) arising by virtue of such Subject Claim shall, if required by applicable Government Rule, be effectively secured by posting of cash collateral or a surety bond (or similar instrument) by a reputable surety company, (c) none of the Administrative Agent, nor any Secured Party could reasonably be expected to be exposed to any risk of criminal liability or civil liability as a result of such contest and (d) the failure to pay such Subject Claim under the circumstances described above could not otherwise reasonably be expected to have a Material Adverse Effect. The term “Contest” used as a verb shall have a correlative meaning.

“Contract” shall mean, as to any Person, any obligation, agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument which includes rights that run in favor of such Person, to which such Person chooses to become a party, or by which such Person or any of its Property is bound or to which any of its Property is subject.

“Control” (including, with its correlative meanings, “Controlled by” and “under common Control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“Court” shall have the meaning given to such term in Recital C.

“Debtors” has the meaning assigned to such term in Recital C.

“Default” shall mean an event which with notice or lapse of time or both would become an Event of Default.

“Defaulting Lender” shall mean any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has (other than via an Undisclosed Administration), (i) become the subject of a proceeding under the Bankruptcy Code of the United States of America, or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or a similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Government Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Government Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

“DIP Fee” shall have the meaning assigned to such term in Section 2.03.

“DIP Financing Documents” shall mean this Agreement, the DIP Orders, each of the Notes, and any other agreement entered into, now or in the future, in connection with this Agreement.

“DIP Orders” mean the Interim Order(s) and the Final Order(s) entered by the Court.

“Disbursement Agreement” shall have the meaning given to such term in the Pre-Petition Credit Agreement.

“Disqualified Capital Stock” shall mean any equity interest which either (a) is not subject to a first priority Lien in favor of the Secured Parties hereunder or (b) by its terms, (i) is convertible into or exchangeable with another security (unless such security and such other security to which it is converted or for which it is exchanged would only be Disqualified Capital Stock pursuant to this clause (i)), (ii) matures or is mandatorily redeemable, or is redeemable at the option of the holder thereof, in whole or in part, or (iii) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations, *provided that*, in no event shall any Preferred Units constitute Disqualified Capital Stock.

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

“Embargoed Person” shall have the meaning assigned to such term in Section 10.11.

“Environmental Claim” shall mean, with respect to any Person, any written notice, inquiry, letter, request for information, investigation, claim, or administrative, regulatory or judicial action, suit, hearing, judgment, order, demand or other written communication, in each case, requesting injunctive or equitable relief, or alleging or asserting a liability or obligation, or potential liability or obligation, arising under any Environmental Law, including potential liability or obligation for investigatory or assessment costs, corrective costs, cleanup costs, governmental response or enforcement costs, contribution, cost recovery, damages to natural resources or other Property, personal injuries, fines, penalties or restrictions pursuant to any Environmental Law.

“Environmental Laws” shall mean any and all applicable Government Rules relating to the preservation or restoration of environmental quality, pollution, or the protection, preservation or restoration of the environment, natural resources, human health or safety (to the extent relating to exposure to Hazardous Materials), including any and all Government Rules regulating or imposing liability or standards of conduct with respect to (a) emissions, discharges, Releases or threatened Releases of any substance (including noise or nuisance odors) into the environment (including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, plant or animal life, and any other environmental medium or natural resource), (b) Hazardous Materials, including laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage disposal, recovery, transport or other handling of Hazardous Materials, or (c) global warming and climate change.

“EOR Operations” shall mean operations conducted by the Borrower to explore for, produce, process, and take away crude oil from the Ryckman Creek Field, which operations will include the following:

- (a) drilling or reworking up to 12 wells for recovery of crude oil and NGLs from the Ryckman Creek Field;
- (b) building pipelines to receive, taking delivery of, owning and marketing for its own account any crude oil extracted from the working gas in connection with Borrower’s natural gas storage and NGL processing operations; and
- (c) reconditioning and constructing additional gathering lines, processing facilities, and other infrastructure (including interconnection and takeaway infrastructure related to crude oil production, NGL extraction, and transportation of crude oil and NGLs at the Ryckman Creek Field).

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

“ERISA Affiliate” shall mean all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control that, together with the Borrower, are treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Pension Plan (other than an event for which the thirty (30) day notice period is waived), (b) the existence with respect to any Pension Plan of an “accumulated funding deficiency” (as defined in Section 412(c) of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, (d) the filing of a motion of intent to terminate a Pension Plan (other than a standard termination under Section 4041(b) of ERISA of a Pension Plan maintained by an ERISA Affiliate of the Borrower) or the treatment of an amendment to a Pension Plan as a termination under Section 4041(e) of ERISA, (e) the failure of a Pension Plan to satisfy the requirements of Section 401(a)(29) of the Code, Section 436 of the Code or Section 206(g) of ERISA or any requirements of the Pension Funding Rules (or the receipt by the Borrower or any ERISA Affiliate of any notice from any Multiemployer Plan concerning the failure of a Multiemployer Plan to satisfy any of the requirements of the Pension Funding Rules), (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, (g) the receipt by the Borrower or any ERISA Affiliate from the PBGC (or any successor thereto) or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan, (h) the incurrence by the Borrower or any of its ERISA Affiliates of any Withdrawal Liability, (i) the receipt by the Borrower or any ERISA Affiliate of any notice from any Multiemployer Plan, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (j) the Borrower or any ERISA Affiliate is in default (as defined in Section 4219 of ERISA) with respect to any Withdrawal Liability payment owed to a Multiemployer Plan), or (k) any Lien in favor of the PBGC shall encumber any property or assets of Borrower or any ERISA Affiliate.

“Event of Abandonment” shall mean (a) any written or public statement of the Borrower, or any Affiliate of the Borrower, that it is abandoning the Project or the NRU/Supplemental Subproject, or (b) the Project or the NRU/Supplemental Subproject shall be abandoned or work thereon shall cease for a period of more than thirty (30) consecutive days for any reason (which period shall be measured from the first occurrence of a work stoppage and continued until substantial work on the Project or the NRU/Supplemental Subproject is resumed and thereafter diligently continued).

“Event of Default” shall have the meaning assigned to such term in Section 11.01.

“Event of Loss” shall mean any loss of, destruction of or damage to any Property of the Borrower.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment

request by the Borrower under Section 5.05) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.04(g), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order" shall have the meaning assigned to such term in Section 7.22(a).

"Exit Facility" shall have the meaning assigned to such term in Section 2.07.

"FASB" shall mean the United States Financial Accounting Standards Board or any successor agency thereto.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

"Federal Funds Rate" shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of one percent) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day by the Federal Reserve Bank of New York, and (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average (rounded upward, if necessary, to the next 1/100 of 1%) of the quotations for such date for such transactions received by the Administrative Agent from federal funds brokers of recognized standing selected by it.

"FERC" shall mean the United States Federal Energy Regulatory Commission or any successor agency thereto.

"Fifth Amendment Effective Date" shall mean March _____, 2017.

"Final Order" shall mean the order entered by the Court in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2), pursuant to Sections 364(c) and (d) of the Bankruptcy Code, as to which no stay has been entered and no appeal has been timely filed, and which has not been vacated, modified or reversed, (a) authorizing the Debtors to incur Post-Petition secured indebtedness and to grant liens and security interests securing the Obligations in accordance with the terms of this Agreement and the other DIP Financing Documents, (b) providing for the super-priority of the Obligations, including without limitation, a specific grant of a security interest to Lender in all Collateral, as well as the right to the proceeds from all Collateral in accordance with this Agreement and the other DIP Financing Documents, (c) providing "adequate protection" pursuant to Section 364(d) of the Bankruptcy Code to such creditors whose liens and security interests have been primed, and (d) authorizing the payment by the Debtors of all fees and expenses contemplated by this Agreement and the other DIP Financing Documents, each asset forth in such order. Additionally, such order shall provide for usual and customary protections for Lender, including, but not limited to, (i) a waiver of any and all claims and causes of action of the Debtors against Lender on account of the Pre-Petition Debt and Pre-Petition Loan Documents, including, but not limited to, any claims for preference, fraudulent conveyance or other claims arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection or avoidability of the secured claims of Lender, subject to the right of any creditors' committee (or if no creditors' committee is appointed, any party in interest other than Personal Guarantor or a Credit

Party) to investigate and challenge (and to the extent successful, avoid) any such liens, security interests and claims for a period of 45 days from the date the creditors committee is appointed, (ii) an acknowledgment by the Debtors and a finding by the Court as to the amount of the Pre-Petition Debt and the validity of Lender's liens and security interests on the Pre-Petition Collateral, (iii) a waiver by the Debtors of any right to assert a surcharge or other claim under Section 506(c) of the Bankruptcy Code against any of the Collateral, (iv) a waiver by the Debtors of any right to assert or require marshalling of any Collateral, and (v) preclusion of any Post-Petition financing, on a priming basis or otherwise, other than pursuant to this Agreement, unless such Post-Petition financing first indefeasibly satisfies the Obligations (including any Pre-Petition Debt) outstanding to Lender and this Agreement has been terminated, or Lender expressly consents to such financing and the priming liens thereof in writing.

“Financial Advisor” shall mean AlixPartners.

“Financial Officer” shall mean: (a) with respect to any Person that is a corporation, the president, chief financial officer, principal accounting officer, vice president (provided that such vice president has detailed knowledge of the ongoing financial affairs of such Person), treasurer or controller of such Person, (b) with respect to any Person that is a partnership, the president, chief financial officer, principal accounting officer, vice president (*provided* that such vice president has detailed knowledge of the ongoing financial affairs of such Person), treasurer or controller of such Person or a general partner of such Person (or the Financial Officer (as determined in the same manner as this definition) of such general partner, or the manager or managing member of such general partner if such general partner is a limited liability company), (c) with respect to any Person that is a limited liability company, the manager, the managing member or a duly appointed president, chief financial officer, principal accounting officer, vice president (*provided* that such vice president has detailed knowledge of the ongoing financial affairs of such Person), treasurer or controller of such Person (or the Financial Officer (as determined in the same manner as this definition) of such manager or managing member), and (d) with respect to any other type of Person, a similar or equivalent Financial Officer (as determined in the same manner as this definition) of such Person.

“Firm Storage Service Agreements” shall mean each Storage Service Agreement pursuant to which the Borrower agrees to provide firm, non-interruptible storage services.

“Force Majeure” shall mean an event or circumstance in the nature of a “force majeure,” an “uncontrollable force” or a similar event or occurrence excusing nonperformance under a Material Contract or under any FERC tariff.

“Foreign Lender” shall mean (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“GAAP” shall mean generally accepted accounting principles in the United States applied on a basis consistent with those principles set forth in Section 1.02(a).

“Government Approval” shall mean (a) any authorization, consent, entitlement, approval, license, lease, ruling, permit, certification, waiver, exemption, filing, variance, claim, order, judgment or decree of, granted, given or otherwise made available by or with, (b) any required notice to, (c) any declaration of or with or (d) any registration by or with, any Government Authority.

“Government Authority” shall mean any international, foreign or United States federal, state, municipal, local, regional, district, territorial, or other governmental or quasi-governmental department,

legislative body, commission, branch, board, bureau, agency, regulatory authority, instrumentality, organization, judicial or administrative body or entity.

“Government Rule” shall mean any statute, law, regulation, ordinance, treaty, rule, judgment, order, consent, decree, ruling, permit, concession, grant, franchise, license, agreement, directive, requirement of, or other governmental restriction or any similar binding form of decision of or determination by, or any binding interpretation or administration of any of the foregoing by, any Government Authority, including all common law and any Government Approval, whether now or hereafter in effect.

“Guarantee” shall mean, with respect to any Person, a guarantee, an endorsement, a contingent agreement to purchase or to furnish funds for the payment or maintenance of, or otherwise to be or become contingently liable under or with respect to, the Indebtedness, other obligations, net worth, working capital or earnings of any other Person, or an agreement to purchase, sell or lease (as lessee or lessor) Property of any other Person (including products, materials, supplies or services) for the purpose of enabling such Person in its capacity as a debtor to make payment of its obligations, or an agreement to assure a creditor against loss as a result of the failure of another Person to perform, and including a reimbursement obligation related to causing a bank or other financial institution to issue a letter of credit or other similar instrument for the benefit of another Person, but excluding (a) endorsements for collection or deposit in the ordinary course of business and (b) indemnity or hold harmless provisions included in Contracts with non-Affiliates entered into in the ordinary course of business. The terms “Guarantee” and “Guaranteed” used as verbs shall have correlative meanings.

“Hazardous Material” shall mean: (a) any petroleum or petroleum products (including all derivatives thereof or synthetic substitutes therefor), flammable, corrosive, reactive or ignitable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs), and (b) any chemicals, substances, other materials or wastes (whether solids, liquids, or gases, including any mixture thereof) which are now or hereafter become defined as or regulated as “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants” or words of similar import under any Environmental Law.

“Hedging Agreement” shall mean any swap, cap, collar, forward purchase, forward sale, option, spot forward contract, swaption or similar Contract or arrangement dealing with interest rates, currency exchange rates, commodities, or commodity prices, either generally or under specific contingencies.

“Holdco” shall mean Ryckman Creek Resources Holding Company, LLC, a limited liability company organized under the laws of the State of Delaware.

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person; (d) all obligations of such Person to pay the deferred purchase price of Property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business); (e) all Indebtedness of others secured by any Lien on Property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such Property; (f) all Capital Lease Obligations and synthetic lease obligations of such Person; (g) all Sale and Leaseback Attributable Indebtedness of such Person; (h) all obligations of such Person for the reimbursement of any obligor in respect of letters of credit (except to the extent fully cash collateralized), letters of guaranty, bankers’ acceptances and similar credit

transactions; and (i) all Guarantees of such Person in respect of Indebtedness referred to in clauses (a) through (h) above.

“Indemnified Group” shall have the meaning assigned to such term in Section 13.03(b).

“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any DIP Financing Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” shall have the meaning assigned to such term in Section 13.03.

“Independent Engineer” shall mean any Person engaged by or on behalf of the Administrative Agent to act as Independent Engineer for the purposes of this Agreement.

“ING” shall have the meaning assigned to such term in the preamble to this Agreement.

“Initial Advance Amount” shall have the meaning assigned to such term in Section 2.01(b).

“Initial Project” shall have the meaning assigned to such term in Recital A.

“Insurance Consultant” shall mean any Person as the Administrative Agent may engage on behalf of the Lenders to act as Insurance Consultant for the purposes of this Agreement.

“Interest Rate” shall mean (a) with respect to the Loans made pursuant to the Blocked Commitments and the Closing Date Commitments, the LIBOR Rate plus seven and one-half percent (7.5%) and (b) with respect to the Loans made pursuant to the Supplemental Commitments, the LIBOR Rate plus ten percent (10)%.

“Interim Order” shall mean the order(s) entered by the Court in the Chapter 11 Case pursuant to Sections 364(c) and (d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), as to which no stay has been entered and no appeal has been timely filed, and which has not been vacated, modified or reversed, (a) authorizing the Debtors to incur Post-Petition secured indebtedness and to grant liens and security interests under the Revolving Line of Credit in accordance with this Agreement and the other DIP Financing Documents, (b) providing for the super-priority of the Obligations, including without limitation, a specific grant of a security interest to Lender in all Collateral, as well as the right to the proceeds from all Collateral in accordance with this Agreement and the other DIP Financing Documents, (c) providing “adequate protection” pursuant to Section 364(d) of the Bankruptcy Code to such creditors whose liens and security interests have been primed, and (d) authorizing the payment by the Debtors of all fees and expenses contemplated by this Agreement and the other DIP Financing Documents, each on an interim basis and as set forth in such order. Additionally, such order shall provide for usual and customary protections for Lender, including, but not limited to, (i) a waiver of any and all claims and causes of action of the Debtors against Lender on account of the Pre-Petition Debt and Pre-Petition Loan Documents, including, but not limited to, any claims for preference, fraudulent conveyance or other claims arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection or avoidability of the secured claims of Lender, subject to the right of any creditors’ committee (or if no creditors’ committee is appointed, any party in interest other than Personal Guarantor or a Credit Party) to investigate and challenge (and to the extent successful, avoid) any such liens, security interests and claims for a period of 45 days from the date the creditors committee is appointed, (ii) an acknowledgment by the Debtors and a finding by the Court as to the amount of the Pre-Petition Debt and the validity of Lender’s liens on the Pre-Petition Collateral, (iii) notice of the Debtors’ intention to waive in the Final Order any right to assert a surcharge or other claim under Section 506(c) of the Bankruptcy

Code against any of the Collateral, (iv) a waiver by the Debtors of any right to assert or require marshalling of any Collateral, and (v) preclusion of any Post-Petition financing, on a priming basis or otherwise, other than pursuant to this Agreement, unless such Post-Petition financing first indefeasibly satisfies the Obligations (including any Pre-Petition Debt) outstanding to Lender and this Agreement has been terminated, or Lender expressly consents to such financing and the priming liens thereof in writing.

“Investment” shall have the meaning assigned to such term in Section 10.04.

“Investor” shall mean, collectively, EQT Infrastructure (No.1) Limited Partnership, EQT Infrastructure (No.2) Limited Partnership, EQT Infrastructure (No.3) Limited Partnership, EQT Infrastructure (No.4) Limited Partnership, in each case, acting by its general partner EQT Infrastructure (General Partner) LP, acting by its general partner EQT Infrastructure Limited, a Guernsey limited liability company, and EQT Infrastructure Co-Investment Scheme, acting by its manager, EQT Infrastructure Limited, a Guernsey limited liability company.

“Judgment Threshold” shall mean \$2,000,000.

“Lender” shall mean each financial institution listed on Appendix A, as well as any Person that becomes a “Lender” hereunder pursuant to Section 13.06(b).

“LIBOR Rate” shall mean the rate, with respect to any one month period, appearing on Reuters Screen LIBOR01 Page as reported on Bloomberg (or on any successor or substitute page of such service, or any successor to or substitute for such service, or if such page becomes unavailable without a successor or substitute then a similar service chosen by the Administrative Agent, in each case providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, on the day that is two Business Days prior to the commencement of such one month period, as the rate for the offering of Dollar deposits with a maturity comparable to such period.

“Lien” shall mean, with respect to any Property of any Person, any mortgage, lien, pledge, charge, lease, easement, servitude, security interest or encumbrance of any kind on such Property of such Person, and shall include the rights of a subcontractor against such Person or Property arising from a stop payment notice. For purposes of this Agreement and the other DIP Financing Documents, a Person shall be deemed to own subject to a Lien any Property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such Property.

“Litigation Proceeds” shall mean, with respect to any claim or counterclaim asserted against any Person by Borrower in connection with any litigation, all cash proceeds received by Borrower from any such claim or counterclaim, net of any fees, costs or expenses incurred by Borrower in connection with prosecuting such claims or counterclaims, that (i) have not been paid, and (ii) are not provided for in the Budget.

“LLC Agreement” shall mean that certain Amended and Restated Limited Liability Company Agreement of the Borrower, dated as of October 28, 2011, as amended by that certain Amendment No. 1 thereto dated effective January 15, 2014, that certain Amendment No. 2 thereto dated effective June 2, 2014 and that certain Amendment No. 3 thereto dated as of October 31, 2014.

“Loan” shall mean an Advance of funds by a Lender to the Borrower.

“Loss Proceeds” shall mean insurance proceeds, Condemnation awards or other compensation, awards, damages and other payments or relief (exclusive, in each case, of the proceeds of liability insurance and business interruption insurance and other payments for interruption of operations) with respect to any Event of Loss or any Condemnation.

“Losses” shall have the meaning assigned to such term in Section 13.03.

“Material Adverse Effect” shall mean a material adverse effect on (a) the Project, business, assets, property, condition (financial or otherwise), or operations of the Borrower, (b) the ability of the Borrower or its Affiliates to perform their respective obligations under any of the DIP Financing Documents or any Material Contract, (c) the validity, attachment, perfection, enforceability or priority of the security interests granted in favor of the Administrative Agent for the benefit of the Secured Parties pursuant hereto, (d) the rights and remedies of the Administrative Agent or any of the Secured Parties under any DIP Financing Document or (e) the business, assets, property, condition (financial or otherwise) or operations of any of Peregrine or Holdco.

“Material Contract” shall mean each of the contracts and agreements identified on Schedule I hereto.

“Material Indebtedness” shall mean Indebtedness of the Borrower with an aggregate outstanding principal amount exceeding \$1,000,000, but only to the extent such Indebtedness constitutes Indebtedness of the type described in any one or more of clauses (a), (b) (to the extent such Indebtedness is funded debt and in no event shall include the Borrower’s obligations under reclamation bonds, oil, gas or storage lease bonds, or other performance bonds and other similar instruments guaranteeing Borrower’s performance (as opposed to payment) obligations), (e) (other than Indebtedness contractors owed to subcontractors for the unpaid purchase price of Property or services related to the Project), (f) (except to the extent such Indebtedness is at the time being Contested), (g), (i) and (j) (to the extent the Indebtedness Guaranteed is Indebtedness of the type referred to in any of the aforementioned clauses) in the definition of the term “Indebtedness.”

“Maturity Date” shall mean the earlier to occur of (a) effective date of a plan of reorganization in the Chapter 11 Case and (b) ~~April 14,~~ August 15, 2017.

“Mechanics’ Liens” shall mean carriers’, warehousemen’s, mechanics’, workmen’s, materialmen’s, construction or other like statutory Liens, and shall include the rights of a subcontractor arising from a stop payment notice.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Monthly Payment Date” shall mean the last Business Day of each calendar month.

“Multiemployer Plan” shall mean a multiemployer plan defined as such in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the six year period immediately preceding the date hereof, has made or been obligated to make contributions.

“Net Sales Proceeds” shall have the meaning assigned to such term in the Disbursement Agreement.

“NGLs” shall have the meaning assigned to such term in Recital A.

“Nonrecourse Persons” shall have the meaning assigned to such term in Section 13.10(b).

“Notes” shall have the meaning assigned to such term in Section 2.06(a).

“Notice of Borrowing” shall have the meaning assigned to such term in Section 4.05.

“NRU Plant” shall have the meaning assigned to such term in Recital A.

“NRU Project” shall mean Borrower’s (a) installation of a replacement plate fin exchanger of the NRU Plant and refurbishment of the damaged NRU Plant, (b) installation of a H₂S scavenger plant and related equipment having total treatment capability of 180 MMCFPD, (c) installation of a new 10-inch pipeline between the Ryckman Creek Facility and the Canyon Creek Facility, along with blending skids, (d) lease of a hydrocarbon dewpoint plant for use during the upcoming 2015-2016 injection/withdrawal cycle, and (e) gel treatments and installation of sand separators at certain I/W Wells (collectively, the “NRU/Supplemental Subproject”), and (ii) repairing and conducting additional construction work related to piping and foundation settlement issues and other construction defects at the Project

“OFAC” shall have the meaning assigned to such term in Section 8.22(b)(v).

“Obligations” shall mean: (a) all loans, advances and other extensions of credit made hereunder by Lenders to the Borrower; and (b) any and all other indebtedness, obligations and liabilities which may be owed by the Borrower to the Administrative Agent or any Lender and arising out of, or incurred under, this Agreement or any of the other DIP Financing Documents (including all Out-of-Pocket Expenses).

“Ordinary Course Obsolescence Dispositions” shall have the meaning assigned to such term in the Disbursement Agreement.

“Other Connection Taxes” shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any DIP Financing Document, or sold or assigned an interest in any Loan or DIP Financing Document).

“Other Taxes” shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to this Agreement or any DIP Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than on assignments pursuant to Section 5.05 or 5.06).

“Overhead” shall mean the overhead charges payable pursuant to Section 4.01 of the Services Agreement.

“Participant” shall have the meaning assigned to such term in Section 13.06(c).

“Participant Register” shall have the meaning assigned to such term in Section 13.06(c).

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any successor trustee.

“Pension Act” shall mean the Pension Protection Act of 2006, as amended.

“Pension Funding Rules” shall mean the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date (as to any such Pension Plan or Multiemployer Plan) of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304, and 305 of ERISA, as applicable.

“Pension Plan” shall mean any “employee pension benefit plan”, as such term is defined in Section 3(2) of ERISA, (other than a Multiemployer Plan) that is (a) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, or (b) in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA, and with respect to (a) and (b) which is maintained or contributed to by Borrower or an ERISA Affiliate or for which any of them has or could have any obligation (contingent or otherwise).

“Peregrine” shall mean Peregrine Midstream Partners LLC, a limited liability company organized under the laws of the State of Texas.

“Permitted Indebtedness” shall mean the Indebtedness permitted under Section 10.01.

“Permitted Investments” shall mean, as to any Person: (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having a maturity not exceeding one (1) year from the date of issuance, (b) interest-bearing deposit accounts, including time deposits and certificates of deposit, of any Lender or, any domestic or foreign commercial bank whose outstanding short-term unsecured debt is rated at least A 1 or the equivalent thereof by S&P or at least P 1 or the equivalent thereof by Moody’s having capital and surplus in excess of \$500,000,000 having a maturity not exceeding ninety (90) days from the date of acquisition, (c) commercial paper issued by any domestic corporation rated at least A 1 or the equivalent thereof by S&P or at least P 1 or the equivalent thereof by Moody’s and, in each case, having a maturity not exceeding ninety (90) days from the date of acquisition, (d) fully secured repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications established in clause (b) above, (e) high-grade corporate bonds rated at least AA or the equivalent thereof by S&P or at least Aa2 or the equivalent thereof by Moody’s having a maturity not exceeding ninety (90) days from the date of acquisition, (f) banker’s acceptances drawn on and accepted by any domestic or foreign commercial bank whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody’s, (g) money market mutual funds whose investment criteria are substantially similar to items (a) through (f) of this definition, (h) instruments issued by an investment company rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody’s having a portfolio consisting of 95% or more of the securities described in items (a) through (g) of this definition, (i) investment contracts pursuant to which moneys are deposited (to bear interest at an agreed rate) with a bank, insurance company or other financial institution whose long-term senior unsecured debt is rated at least A or the equivalent thereof by S&P or at least A2 or the equivalent thereof by Moody’s, and (j) money market mutual funds that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and operated in accordance with Rule 2a-7 and that at the time of such investment are rated equal to or better than Aaa-mf by Moody’s and AAAM by S&P.

“Permitted Liens” shall mean the Liens permitted under Section 10.02.

“Person” shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or Government Authority.

“Petition” shall have the meaning given to such term in Recital C.

“Petition Date” shall have the meaning given to such term Recital C.

“Professional Fees” shall mean all fees and expenses of professionals retained pursuant to Section 327, Section 328, Section 363 or Section 1103 of the Bankruptcy Code in connection with the Chapter 11 Case.

“Plan Support Agreement” shall mean that certain “plan support agreement” dated as of March 23, 2016.

“Platform” shall have the meaning assigned to such term in Section 13.21(a).

“Pledged Accounts” shall have the meaning assigned to such term in the Disbursement Agreement.

“Post Default Rate” shall have the meaning assigned to such term in Section 3.02(b).

“Pre-Petition Debt” shall mean all indebtedness, liabilities, and obligations, including, without limitation, the Pre-Petition Liabilities and all other indebtedness, liabilities and obligations in connection with the Pre-Petition Credit Agreement and the Pre-Petition Loan Documents owed by the Borrower to Pre-Petition Lenders as of the Petition Date, whether direct or indirect, absolute or contingent, primary or secondary, due or to be come due, including all interest thereon accruing after the Petition Date and all legal fees and collection expenses heretofore or hereafter incurred in collecting any of such indebtedness, liabilities or obligations.

“Pre-Petition Credit Agreement” has the meaning assigned to such term in Recital B.

“Pre-Petition Credit Liabilities” has the meaning assigned to such term in Recital B.

“Pre-Petition Credit Liens” has the meaning assigned to such term in Recital B.

“Pre-Petition Lenders” has the meaning assigned to such term in Recital B.

“Pre-Petition Liabilities” shall have the meaning given to such term in Recital B.

“Pre-Petition Liens” shall have the meaning given to such term in Recital B.

“Pre-Petition Loan Documents” shall mean the Pre-Petition Loan Agreement and all other “Loan Documents” as such term is defined in the Pre-Petition Loan Agreement.

“Prime Rate” shall mean the rate of interest equal to the arithmetic average of rates of interest announced by each of JPMorgan Chase Bank, N.A., Citibank, N.A. and Bank of America, N.A. from time to time at such reference lender’s principal New York City office as its prime (or base) rate for U.S. domestic commercial loans, as in effect from time to time.

“PRM” shall mean Peregrine Rocky Mountains LLC, a limited liability company organized under the laws of the State of Delaware.

“Pro Rata Percentage” shall mean with respect to any Lender at any time, the percentage of the total Commitments of all Lenders represented by such Lender’s Commitment.

“Process Agent” shall have the meaning assigned to such term in Section 13.07.

“Project” shall have the meaning assigned to such term in Recital A.

“Property” shall mean any right or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed, whether tangible or intangible, and whether surface or mineral.

“Prudent Industry Practice” shall mean any of the practices, methods, standards and acts engaged in or approved by a substantial portion of the natural gas storage industry in the United States for facilities similar to the Project that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. For clarity, so long as this definition is otherwise complied with, Prudent Industry Practices are not required to be optimum practices or methods.

“Real Property Interests” shall mean all real Property interests of the Borrower, including all of the Borrower’s fee, mineral rights, easement and leasehold interests relating to the Project.

“Recipient” shall mean the Administrative Agent or any Lender, as applicable.

“Recourse Claim” shall have the meaning assigned to such term in Section 13.10(c).

“Register” shall have the meaning assigned to such term in Section 13.06(b)(iv).

“Regulation D, Regulation U and Regulation X” shall mean, respectively, Regulation D, Regulation U and Regulation X of the Board.

“Release” shall mean any releasing, depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, dispersal, migrating, injecting, escaping, leaching, dumping, or disposing on or into the environment, whether intentional or unintentional, including ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, and as otherwise defined in any Environmental Law.

“Release Trigger Date” shall mean the date upon which each of the Court, Administrative Agent and each Lender hereunder have approved, in writing, the release of the Availability Block.

“Required Lenders” shall mean Lenders holding more than 50% of the aggregate outstanding principal amount of all Loans; *provided* that the portion of the aggregate unpaid principal amount of the outstanding Borrowings held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of the Required Lenders.

“Restricted Payment” shall mean all distributions by the Borrower (in cash or Property of the Borrower) on, or other payments or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any portion of any equity interest in the Borrower; *provided* that payments of Overhead by the Borrower under the Services Agreement to the extent set forth in the Budget shall not be deemed to be Restricted Payments.

“Risk Management Policy” shall mean (a) a set of risk management policies with respect to natural gas attached hereto as Exhibit D (as such policies may be modified from time to time pursuant to Sections 9.01(n) and 10.15(b)).

“Ryckman Creek Field” shall have the meaning given such term in Recital A.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of McGraw-Hill, Inc.

“Sale” means a sale of all or substantially all of the Borrower’s assets.

“Sale and Leaseback Attributable Indebtedness” shall mean, when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the seller’s then-current weighted average cost of Loans as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“Sale and Leaseback Transaction” shall have the meaning assigned to such term in Section 10.14.

“Secured Parties” shall mean the Administrative Agent and each of the Lenders.

“Services Agreement” shall mean that certain Services Agreement between Peregrine and the Borrower which shall be in form and substance acceptable to the Administrative Agent, include market rates, terms and conditions, and be on terms no less favorable to the Borrower than the Borrower could obtain in a transaction with an unaffiliated third party.

“Storage Service Agreements” shall mean each service agreement for the storage of natural gas offered by the Borrower.

“Subsidiary” shall mean, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Supplemental Commitment” shall mean, for each Lender, the obligation of such Lender to make Advances, in an aggregate principal and/or face amount not to exceed the Supplemental Commitment amount set forth opposite such Lender’s name on Appendix A(3) attached hereto.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Government Authority, including any interest additions to tax or penalties applicable thereto.

“Technical Advisor” shall mean any Person as the Administrative Agent may engage on behalf of the Lenders to act as Technical Advisor for the purposes of this Agreement.

“Term Loan Principal Debt” means, when determined, the aggregate outstanding principal amount of the Loans.

“Termination Date” shall mean the earlier to occur of: (a) the Maturity Date and (b) acceleration of the Obligations pursuant to Section 11.02 hereof.

“Transaction Documents” shall mean each DIP Financing Document and each Material Contract.

“Transactions” shall mean the transactions contemplated by the Transaction Documents.

“Undisclosed Administration” shall mean, in relation to any Lender, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law of the jurisdiction where such Lender is organized or to which it is subject to home jurisdiction supervision if any applicable Government Rule of that jurisdiction requires that such appointment not be publicly disclosed.

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

“U.S. Borrower” shall mean any Borrower that is a U.S. Person.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.04(f).

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

“Withholding Agent” shall mean the Borrower and the Administrative Agent.

“Wyoming Easement Statute” shall mean WYO. STAT. ANN. § 34-1-141 (2011).

1.02 Accounting Terms and Determinations.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided that* if, after the date of this Agreement, there shall occur any change in GAAP from those used in the preparation of Peregrine's 2013 audited financial statements and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement, either the Borrower or the Required Lenders may by notice to the Lenders and the Borrower, respectively, with the understanding that the Borrower or the Required Lenders, as the case may be, shall have no obligation to agree to such change, require that the Lenders and the Borrower negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Borrower and its Subsidiaries shall be the same as if such change had not been made. No delay by the Borrower or the Required Lenders in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.02(a), financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles. Without limiting the generality of the foregoing, the Borrower shall neither be deemed to be in compliance with any financial covenant hereunder nor out of compliance with any financial covenant hereunder if such state of compliance or noncompliance, as the case may be, would not exist but for the occurrence of a change in accounting principles after the date hereof.

(b) To enable the ready and consistent determination of compliance with the terms of this Agreement, the Borrower will not change the last day of its fiscal year from the calendar year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively unless (A) the Required Lenders and the Borrower mutually agree in writing on new financial covenants that would apply after such accounting change, *provided that* the Required Lenders shall have no obligation to agree to such change, or (B) such change is required in accordance with GAAP.

1.03 Certain Principles of Interpretation. In this Agreement, unless otherwise indicated, the singular includes the plural and plural the singular; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation"; references to articles, sections (or subdivisions of sections), exhibits, annexes, appendices or schedules are to this Agreement (unless otherwise specified); references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, extensions and other modifications and substitutions thereof (including by change orders where applicable) (without, however, limiting any prohibition on any such amendments, extensions and other modifications and substitutions by the terms of this Agreement); and references to Persons include their respective permitted successors and assigns and, in the case of Government Authorities, Persons succeeding to their respective functions and capacities.

1.04 Release of Claims. The Borrower and each other Debtor represent and warrant that neither Borrower nor any other Debtor has any set-off, recoupment, counterclaim, defense, cross-complaint, claim, demand or other cause of action of any nature whatsoever (together, the "Counterclaims") against Administrative Agent or any Lender which arose on or prior to the Closing Date out of the transactions evidenced by the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, this Agreement or the other DIP Financing Documents, any transactions that were renewed or extended

by this Agreement or the DIP Financing Documents, any other transaction with Administrative Agent or any Lender, or which could be asserted to reduce or eliminate all or any part of Borrower or any Debtor's liability to repay the Obligations or to seek affirmative relief or damages of any kind or nature from Administrative Agent or any Lender, irrespective of whether any such claims arise out of contract, tort, violation of law or regulations, or otherwise, including, without limitation, any contracting for, changing, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable, the exercise of any rights and remedies under the DIP Financing Documents, the negotiation for and execution of this Agreement and any settlement negotiations. To the extent that any Counterclaims may exist, whether known or unknown, such are waived and hereby released by the Borrower and each Debtor. Furthermore, the Borrower and each Debtor, on behalf of themselves, their respective successors, agents, attorneys, officers, directors, assigns and personal and legal representatives, do hereby release, remise, acquit and forever discharge Administrative Agent, each Lender and each of their employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct and/or indirect, at law or in equity, of whatsoever kind or nature (each being a "Claim"), whether heretofore or hereafter arising, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties on or prior to the Closing Date, and in any way directly or indirectly arising out of or in any way connected to the Pre-Petition Loan Agreement, this Agreement or the other DIP Financing Documents, irrespective of whether any such claims arise out of contract, tort, violation of law or regulations or otherwise, including but not limited to, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable, the exercise of any rights and remedies under the DIP Financing Documents, the negotiation for and execution of this Agreement, or any settlement negotiations AND INCLUDING, WITHOUT LIMITATION, ANY CLAIMS ARISING ON ACCOUNT OF ANY RELEASED PARTIES' NEGLIGENCE OR STRICT LIABILITY.

ARTICLE II COMMITMENTS

2.01 Loans.

(a) Advances. Subject to the terms and conditions set forth in this Agreement and the DIP Orders, each Lender, severally and not jointly, agrees to make Advances, in accordance with the current Budget, to Borrower in an aggregate amount not to exceed such Lender's Pro Rata Percentage of ~~either Commitment~~ the Blocked Commitments, for each Lender holding Blocked Commitments, the Closing Date Commitments for each Lender holding Closing Date Commitments and/or the Supplemental Commitments for each Lender holding Supplemental Commitments. Without the prior written consent of Administrative Agent, in its sole discretion, in no event shall the aggregate balance of the Advances at any time exceed the total Commitment hereunder minus the Availability Block. Advances repaid or prepaid by Borrower may not be borrowed again.

(b) Initial Advance. The outstanding principal amount of the indebtedness under the Bridge Facility shall, automatically and without any action on the part of any person or entity, under this Agreement constitute and be deemed to be a Loan made under, and in accordance with this Agreement and the accrued interest under the Bridge Facility outstanding as of the date hereof shall be deemed to be Obligations under this Agreement and shall be paid in accordance with Section 3.02(c) hereof. The Borrower agrees that (i) the outstanding principal amount under the Bridge Facility is as of the Closing Date \$5,000,000.00 (the "Initial Advance Amount") and (ii) accrued and unpaid interest under the Bridge Facility is as of the Closing Date \$~~_____~~ 29,726.77.

(c) Priority of Loans. All Loans made hereunder by Lenders to Borrower shall constitute and be deemed an expense of administration in the Chapter 11 Case and shall be entitled to priority under Section 364(c)(1) of the Bankruptcy Code ahead of all other costs and expenses of administration of the kind specified in Sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code, except as otherwise expressly provided in the DIP Orders and except to the extent of, and up to, the Carve-Out permitted under this Agreement.

(d) Termination of Commitments. If not previously terminated pursuant to the terms hereof, all Commitments of the Lenders under this Agreement shall terminate on the Termination Date and neither Administrative Agent nor any Lender shall have any further obligation to provide financing pursuant to this Agreement or any other DIP Financing Document.

2.02 Borrowings. To request a Borrowing pursuant to this Agreement, the Borrower shall deliver to the Administrative Agent (which shall promptly notify the Lenders) a Notice of Borrowing as provided in Section 4.05. Not later than 11:00 a.m. New York City time on the date specified for such Borrowing, each Lender shall make available the amount of the Loan to be made by such Lender on such date to the Administrative Agent, in immediately available funds, by wire transfer to the account specified on the attached Appendix B. The amount of Loans so received by the Administrative Agent for the account of the Borrower shall, subject to the terms and conditions of this Agreement, be made available to the Borrower by remitting the same by 3:00 p.m. New York City time to the Administrative Agent, in immediately available funds, for deposit in accordance with the current Budget.

2.03 DIP Fee Fees. (a) The Borrower hereby agrees to pay to Administrative Agent for the benefit of the Lenders holding Blocked Commitments and Closing Date Commitments, a 2.00% DIP Fee (the “Closing Date DIP Fee”) calculated on the aggregate amount of each Lender’s respective Blocked Commitments and/or Closing Date Commitments in effect on the date hereof, due and payable in cash on the Maturity Date but which shall be fully earned by the Lenders on the date hereof (and once paid shall be non-refundable). For the avoidance of doubt, so long as it remains in effect, the Availability Block shall be subtracted from the aggregate Blocked Commitments shall not be used and Closing Date Commitments for purposes of calculating the DIP Fee unless and until the Trigger Release Date occurs—~~;~~ and

(b) The Borrower hereby agrees to pay to Administrative Agent for the benefit of the Lenders holding Supplemental Commitments, a 5.00% DIP Fee (the “Fifth Amendment Effective Date DIP Fee” and together with the Closing Date DIP Fee, the “DIP Fees”) calculated on the aggregate amount of each Lender’s respective Supplemental Commitments in effect on the Fifth Amendment Effective Date, due and payable in cash on the Maturity Date but which shall be fully earned by the Lenders on the Fifth Amendment Effective Date (and once paid shall be non-refundable).

2.04 Lending Offices. The Loans of each Lender shall be made and maintained at such Lender’s Applicable Lending Office.

2.05 Several Obligations; Remedies Independent. The failure of any Lender to make any Advance to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor the Administrative Agent shall be responsible for the failure of any other Lender to make an Advance to be made by such other Lender. The amounts payable by the Borrower at any time under this Agreement, the Notes or any other DIP Financing Document to each Lender shall be a separate and independent debt.

2.06 Notes.

(a) Notes. The Loans of each Lender shall, at the request of such Lender, be evidenced by a promissory note of the Borrower for Loans substantially in the form of Exhibit A (each, a “Note”). Each Note shall be dated the date hereof, payable to such Lender in an aggregate principal amount equal to such Lender’s Commitment and otherwise duly completed.

(b) Loan Records. The date, and amount of each Loan made by each Lender to the Borrower, and each payment made in respect of the principal of such Loan, shall be recorded by such Lender on its books and, prior to any transfer of any Note evidencing the Loans held by it, endorsed by such Lender on the schedule attached to such Note or any continuation of such schedule; *provided that*, the failure of such Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under such Note.

(c) Subdivision. No Lender shall be entitled to have any Note subdivided, by exchange for promissory notes of lesser denominations or otherwise, except in connection with a permitted assignment of all or any portion of such Lender’s related Commitment, Loans, and such Note pursuant to Section 13.06(b).

(d) Maintenance of Records by the Administrative Agent. The Administrative Agent shall maintain records in which it shall record (i) the amount and date of each Loan made hereunder therefor, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof, and (iv) a copy of each Assignment and Assumption delivered to it pursuant to Section 13.06(b). Upon reasonable notice to the Administrative Agent, the Borrower and each Lender shall have the right to inspect such records from time to time during normal business hours (*provided that* the Administrative Agent shall not be required to expend any funds in connection with such inspection and *provided further that* each Lender shall only be entitled to review records reflecting such Lender’s Pro Rata Percentage); *provided that* the failure of the Administrative Agent to keep or make available such records for inspection shall not affect the obligations of the Borrower to make payment when due of any amount owing hereunder or under the other DIP Financing Documents.

(e) Effect of Entries. Absent manifest error, the entries made in the records maintained pursuant to paragraph (b) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided that* the failure of any Lender or the Administrative Agent to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans and the other Obligations in accordance with the terms of this Agreement.

2.07 Exit Facility. Subject to entry of an order confirming a plan of reorganization that is acceptable to the Administrative Agent and the Lenders, on or prior to the effective date of any such plan, the Loans and other Obligations outstanding pursuant to this Agreement shall convert into an exit credit facility (the “Exit Facility”) secured by first-priority liens on and security interests in the Debtor’s assets (subject only to the Carve-Out) and the Lenders will become lenders under the Exit Facility, each holding their respective pro rata share of the loans thereunder, in full and final satisfaction of the Obligations hereunder. Any Exit Facility shall be in form and substance acceptable to Administrative Agent and Lenders and be subject to the execution and delivery of customary security documents, legal opinions and such other documents, agreements, instruments and certificates as Administrative Agent and Lenders shall require in their sole discretion.

**ARTICLE III
PAYMENTS OF PRINCIPAL AND INTEREST**

3.01 Repayment of Loans. The Borrower hereby agrees to pay to the Administrative Agent, for the account of the Lenders on the Maturity Date, the then unpaid principal amount of all Loans then owing by the Borrower. Each such payment of Loans shall be applied ~~ratably~~ to the Loans of all Lenders in accordance with each Lender's Pro Rata Percentage.

3.02 Interest.

(a) The Borrower hereby agrees to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at a rate *per annum* equal to the Interest Rate ~~-~~ applicable to such Loan; provided that up to five percent (5%) of interest payable with respect to Loans made in connection with the Supplemental Commitments may be paid in kind by capitalizing the amount of in-kind interest on the principal amount of Loans made with respect to the Supplemental Commitments then outstanding (i.e., increasing the outstanding principal amount thereof).

(b) Notwithstanding the foregoing, the Borrower hereby agrees that upon the occurrence of any Event of Default, the Interest Rate shall increase by 2.0% *per annum* (the "Post Default Rate") for the period from and including the date such Event of Default occurs to but excluding the date such Event of Default is remedied or waived.

(c) Accrued interest on each Loan shall be payable in cash and in arrears on each Monthly Payment Date; *provided* that the payment of interest on the initial Monthly Payment Date shall include the sum of all accrued and unpaid interest under the Bridge Facility in addition to any other interest then due.

3.03 Optional Prepayments. Subject to Section 3.03(b), Section 4.04, and Section 5.03, the Borrower shall have the right to prepay Loans at any time or from time to time; *provided that* the Borrower shall give the Administrative Agent notice of each such prepayment as provided in Section 4.05 and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable.

3.04 Termination of Commitments. The Commitments shall terminate on the earlier to occur of (a) the Maturity Date and (b) acceleration of the Obligations pursuant to Section 11.02 hereof.

**ARTICLE IV
PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.**

4.01 Payments.

(a) All payments of principal, interest, fees and other amounts to be made by the Borrower under this Agreement and the Notes and the other DIP Financing Documents, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Administrative Agent by wire transfer to the account specified on the attached Appendix B. No payment shall be made later than 11:00 a.m. New York City time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) All payments received by the Administrative Agent shall be applied:

(i) *First*, to the Carve-Out;

(ii) *Second*, to payment of that portion of the Obligations hereunder constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to Administrative Agent in its capacity as such;

(iii) *Third*, to payment of that portion of the Obligations hereunder constituting fees, indemnities and other amounts (other than principal and interest) payable to Lenders under the DIP Financing Documents, including attorney fees, ratably among Lenders in proportion to the respective amounts described in this clause Third payable to them;

(iv) *Fourth*, to payment of that portion of the Obligations hereunder constituting accrued and unpaid interest on the Loans ratably among Lenders in proportion to the respective amounts described in this clause Fourth payable to them; and

(v) *Fifth*, to payment of that portion of the Obligations hereunder constituting unpaid principal of the Loans ratably among Lenders in proportion to the respective amounts described in this clause Fifth held by them; and

(vi) *Sixth*, to payment of all other Obligations outstanding hereunder ratably among the parties in proportion to the respective amounts described in this clause Sixth held by them;

(c) Each payment received by the Administrative Agent under this Agreement or any Note for the account of any Lender shall be paid by the Administrative Agent promptly to such Lender, in immediately available funds.

(d) If the due date of any payment of principal or fees under this Agreement or any Note would otherwise fall on a day which is not a Business Day, such date shall be extended to the next succeeding Business Day and interest shall be payable for any principal (but not for any fee) so extended for the period of such extension.

4.02 Pro Rata Treatment. Except to the extent otherwise provided in this Agreement: (a) the advancing of Loans under Section 2.01 shall be made by the applicable Lenders on a *pro rata* basis (based on their respective Commitments) and (b) each payment by Borrower applicable to the Loans shall be made for the account of the Lenders *pro rata* in accordance with the respective unpaid principal amounts of the Loans held by them.

4.03 Computations. The DIP Fee and interest and fees on Loans shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) during the period for which payable. Interest on obligations of the Borrower or the Lenders that are computed on the basis of the Prime Rate shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) during the period for which payable.

4.04 Minimum Amounts. Any Borrowing shall be in an aggregate principal amount that is (a) an integral multiple of \$250,000 and not less than \$500,000 or (b) equal to the remaining available balance of the Commitment *minus* the Availability Block. Each voluntary and partial prepayment of

principal of Loans shall be in an amount that is an integral multiple of \$500,000 and not less than \$5,000,000 (or, if less, the aggregate amount of all Loans outstanding).

4.05 Certain Notices. Notices by the Borrower to the Administrative Agent of Borrowings and optional prepayments of Loans shall be irrevocable and shall be effective only if received by the Administrative Agent not later than 11:00 a.m. New York City time three (3) Business Days prior to the date of the relevant Borrowing or prepayment. Each such notice of Borrowing shall be in the form of Exhibit B-1 and shall be subject to the satisfaction of the conditions set forth in Article VI of this Agreement (each a “Notice of Borrowing”). Each such notice of optional prepayment shall be in the form of Exhibit B-2 and shall specify the Loan to be prepaid and the date of optional prepayment (which shall be a Business Day). The Administrative Agent shall promptly notify the applicable Lenders of the contents of each such Notice of Borrowing and any notice of prepayment.

4.06 Non-Receipt of Funds by the Administrative Agent.

(a) Unless the Administrative Agent shall have received notice from an applicable Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with the requirements of this Agreement, and the Administrative Agent may (but shall not be obligated to under any circumstances), in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the greater of the Prime Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender’s Loan as part of such Borrowing for purposes of this Agreement, and the Borrower’s obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 4.06(a) shall cease.

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

4.07 Sharing of Payments; Etc.

(a) The Borrower agrees that, in addition to (and without limitation of) any right of set-off, banker's lien or counterclaim a Lender may otherwise have, each Lender (other than a Lender that, at the time, is a Defaulting Lender) shall be entitled, at its option, to offset balances held by it for the account of the Borrower at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans or any other amount payable to such Lender under this Agreement, that is not paid when due (regardless of whether such balances are then due to the Borrower), in which case it shall promptly notify the Borrower and the Administrative Agent of such action; *provided that* such Lender's failure to give such notice shall not affect the validity of such action.

(b) If any Lender shall obtain from the Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any Note held by it or any other DIP Financing Document or through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise (other than from the Administrative Agent as provided in this Agreement), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the applicable Loans or such other amounts then due hereunder, by the Borrower to such Lender than the percentage received by any other applicable Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due on such Loans or other amounts, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, with the effect that all the applicable Lenders shall share the benefit of such excess payment (net of any expenses which may be incurred by such Lender in obtaining or preserving such excess payment) *pro rata* in accordance with the unpaid principal of or interest on the applicable Loans or such other amounts, respectively, owing to each of the applicable Lenders as set forth hereunder. To such end all the applicable Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) The Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise all rights of set-off, banker's liens, counterclaims or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained in this Agreement shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured claim.

**ARTICLE V
YIELD PROTECTION; ETC.**

5.01 Alternate Rate of Interest. If, at any time, with respect to the making (for the purposes of this Section 5.01, a "borrowing") of Loans:

(a) the Administrative Agent reasonably determines that, by reason of any change arising after the date of this Agreement, the LIBOR Rate cannot be determined using the methodologies described in the definition of LIBOR Rate; or

(b) the Administrative Agent is advised by the Required Lenders that the Lenders have reasonably determined that the LIBOR Rate will not adequately and fairly reflect the cost to those Lenders of making or maintaining their Loans included in such borrowing;

then the Administrative Agent will give notice of those circumstances to the Borrower and the Lenders (by facsimile (subject to electronic confirmation of successful transmission), electronic mail, or telephone promptly confirmed in writing) as promptly as practicable and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to that notice no longer exist (which notice of subsequent change in circumstances shall be given as promptly as practicable), (i) if any request for a borrowing is made, such borrowing will be made with Base Rate Loans, and (ii) each affected Loan will automatically, on the last day of the applicable one month period, convert into a Base Rate Loan; *provided that* if, in the case of subparagraph (b) above, the Borrower agrees in writing to pay the additional costs identified by the Required Lenders in writing expected to be incurred in connection with such Loans, then subparagraphs (i), (ii) and (iii) above shall have no further force and effect unless and until the Borrower fails to pay when due such additional costs or the Required Lenders or the Administrative Agent provide a subsequent notice pursuant to subparagraph (b) above.

5.02 Increased Costs.

(a) If any Change in Law shall:

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

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

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

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender under any DIP Financing Document, then the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender for the additional costs incurred or reduction suffered.

(b) If any Lender reasonably determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or (without duplication) on the capital of its holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or its holding company could have achieved but for that Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower shall pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender (without duplication) or its holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, under Section 5.02(a) or Section 5.02(b) and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount due and payable and set forth on any such certificate within ten (10) days after its receipt.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Article V shall not constitute a waiver of such Lender's right to demand that compensation; *provided that* the Borrower shall not be required to compensate a Lender pursuant to this Section 5.02 for any increased costs or reductions incurred more than 270 days prior to the date on which such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to those increased costs or reductions and of such Lender's intention to claim compensation for those circumstances; *provided further that*, if the Change in Law giving rise to those increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include that period of retroactive effect.

5.03 Break Funding Payments. In the event of (a) the payment of any principal of any Loan (including under Section 3.03 or Section 3.04 or as a result of an Event of Default) or (b) the failure to borrow or prepay any Loan on the date specified in any Borrowing notice then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to any such event. Such loss, cost or expense to any Lender shall be deemed to include an amount reasonably determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the applicable one month period for such Loan over (ii) the amount of interest that would accrue on such principal amount for that period at the interest rate that such Lender would bid were it to bid, at the commencement of that period, for Dollar deposits of a comparable amount and period from other banks in the eurodollar market. To claim any amount under this Section 5.03, the Lender must deliver to the Borrower a certificate setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.03 (including calculations, in reasonable detail, showing how such Lender computed such amount or amounts) which certificate shall be conclusive and binding in the absence of manifest error. The Borrower shall pay such Lender the amount due and payable and set forth on any such certificate within ten (10) days after its receipt.

5.04 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any DIP Financing Document shall be made without deduction or withholding for any Taxes, except as required by applicable Government Rule. If any applicable Government Rule (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Government Authority in accordance with applicable Government Rule and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the Administrative Agent or applicable Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Government Authority in accordance with any applicable Government Rule, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 10 days after demand therefor (without duplication of any amounts to be paid pursuant to Section 5.04(b)), for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Government Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.06(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any DIP Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Government Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any DIP Financing Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Government Authority pursuant to this Section 5.04, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Government Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any DIP Financing Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.04 (ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing, so long as the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any DIP Financing Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any DIP Financing Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided that* if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender

becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any DIP Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.04 (including by the payment of additional amounts pursuant to this Section 5.04), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Government Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Government Authority) in the event that such indemnified party is required to repay such refund to such Government Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 5.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any DIP Financing Document.

5.05 Removal by Assignment of Lenders Incurring Increased Amounts. If any Lender shall make any demand for payment under Section 5.01, Section 5.02 or Section 5.04, if any Lender defaults in its obligations to fund Loans hereunder, if it becomes unlawful, or by reason of a Change in Law any Lender is unable, to honor its obligations to make Loans pursuant to Section 5.07, or if the Borrower exercises its replacement rights pursuant to Section 13.04(c), the Borrower may demand that the affected Lender assign in accordance with Section 13.06 to one or more other Lenders designated by the Borrower all (but not less than all) of such Lender's interests, rights and obligations under this Agreement and the other DIP Financing Documents. If any such Lenders designated by the Borrower shall fail to consummate such assignment on terms acceptable to the affected Lender, or if the Borrower shall fail to designate any such other Lenders for all of the affected Lender's interests, rights and obligations, then such demand by the Borrower shall become ineffective; it being understood for purposes of this Section 5.05 that such assignment shall be conclusively deemed to be on terms acceptable to the affected Lender, and the affected Lender shall be compelled to consummate such assignment to such other Lender designated by the Borrower, if such other Lender (a) shall agree to such assignment and (b) shall offer compensation to the affected Lender in an amount equal to all amounts then owing by the Borrower to the affected Lender hereunder, under the Note or Notes made by the Borrower to the affected Lender, and under the other DIP Financing Documents, whether for principal, interest, fees, costs or expenses. Notwithstanding anything to the contrary in this Section 5.05, the Borrower may not make any demand for assignment pursuant to this Section 5.05 unless (i) in the case of any such assignment resulting from a claim for payment under Section 5.02 or Section 5.04, such assignment will result in a reduction in such payment, and (ii) the circumstances entitling the Borrower to make such demand are continuing.

5.06 Change of Lending Office. If an event occurs with respect to a lending office of any Lender that obligates the Borrower to pay any amount under Section 5.01, Section 5.02 or Section 5.04, such Lender, if requested by the Borrower in writing, shall use reasonable efforts to designate another lending office or offices the designation of which will reduce the amount the Borrower is so obligated to pay, eliminate such obligation or reduce the amount the Lender is so entitled to claim, *provided that* (a) such designation would not, in the sole discretion of the Lender, be disadvantageous to such Lender in any manner or contrary to such Lender's policy and (b) the Borrower shall pay the reasonable costs incurred by such Lender in designating another lending office. Any Lender may at any time and from time to time change any lending office and shall give notice of any such change to the Administrative Agent and the Borrower.

5.07 Illegality; Loans During Event of Default. In the event that it becomes unlawful or, by reason of a Change in Law, any Lender is unable to honor its obligation to make or maintain Loans at the Interest Rate, then such Lender will promptly notify the Borrower of such event (with a copy to the Administrative Agent) and such Lender's obligation to make, Loans at the Interest Rate shall be suspended until such time as such Lender may again make and maintain Loans at the Interest Rate. Each Lender agrees to use reasonable efforts, including using reasonable efforts to designate a different lending office for funding or booking its Loans or to assign its rights and obligations under the DIP Financing Documents to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or avoid such illegality and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; *provided that* prior to incurring any such costs or expenses such Lender provides written notice to the Borrower setting forth in reasonable detail a good faith estimate of such costs and expenses.

5.08 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) such Defaulting Lender's Loans shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any waiver, amendment, modification, or supplement pursuant to Section 13.04), provided (i) such Defaulting Lender's Commitments may not be increased or extended without its consent and (ii) the principal amount of, or interest or fees payable on, Loans or any disbursements made under Section 2.07(f) may not be reduced or excused or the scheduled date of payment may not be postponed as to such Defaulting Lender without such Defaulting Lender's consent; and

(b) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 4.07 but excluding Section 5.08(g)) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) *second*, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) *third*, if so determined by the Administrative Agent and the Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) *fourth*, pro rata, to the payment of any amounts owing to the Borrower or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (vi) *fifth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided that* if such payment is a prepayment of the principal amount of any Loans with respect to which a Defaulting Lender has not fully funded its participation obligations, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender.

(c) In the event that the Administrative Agent and the Borrower each agrees in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Percentage after giving effect to such reallocation, whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further, that* except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(d) If any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 13.06), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that* (i) unless the assignee is a Lender that is not a Defaulting Lender, an Affiliate of a Lender that is not a Defaulting Lender or an Approved Fund, the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld or delayed, and (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts). A Defaulting Lender shall not be required to make any such assignment and delegation if,

prior thereto, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

ARTICLE VI CONDITIONS PRECEDENT

6.01 Conditions to Effectiveness of Agreement. This Agreement shall be effective on the Business Day on which each of the conditions described in clauses (a) – (m) below is satisfied (or waived in accordance with Section 13.04) (such date, the “Effective Date”):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto a counterpart of this Agreement (together with all Appendices, Schedules and Exhibits) signed on behalf of such party (which may include facsimile or e-mail in portable document format (.pdf) transmission of a signed signature page of this Agreement).

(b) The Administrative Agent (or its counsel) shall have received from the Borrower executed Notes payable to each Lender that has requested a Note, in the amount of their respective total Commitment.

(c) The Administrative Agent shall have received such customary certificates and other documents it may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of this Agreement, the applicable notes and the Transactions in connection therewith and any other legal matters relating to the Borrower, this Agreement, the applicable notes or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent.

(d) The Administrative Agent shall have received favorable written opinions in form and substance reasonably satisfactory to Administrative Agent which shall cover customary matters for debtor-in-possession financings of the type provided for herein, and Borrower hereby authorizes and directs such counsel to deliver such opinions.

(e) The Administrative Agent shall have received counterpart originals (except as otherwise noted) of all DIP Financing Documents set forth on Schedule 7.01(h), duly completed and executed (as applicable) in a sufficient number of counterparts and in proper form for recording, if necessary, and the Borrower shall have taken all further material actions required by applicable Government Rules or reasonably requested by the Administrative Agent to create and perfect Liens in the Collateral in favor of the Administrative Agent for the benefit of the Secured Parties.

(f) All fees (including the fees contemplated in Section 2.03 and reasonable legal fees and expenses and recording Taxes and fees), invoiced costs and expenses, and other compensation then due and payable to the Lenders and the Administrative Agent under this Agreement or any other DIP Financing Document shall be paid;

(g) As of the Closing Date and other than the Chapter 11 Case, there shall be no (x) injunction, writ or restraining order restraining or prohibiting the consummation of the financing arrangements contemplated under this Agreement, or (y) suit, action, investigation or proceeding (judicial or administrative) pending against Borrower or Debtors or any of their assets, which, in the opinion of Administrative Agent, if adversely determined, could have a Material Adverse Effect and which is not subject to the Automatic Stay;

(h) The Final Order, in form and substance reasonably satisfactory to Lender, shall have been entered by the Court, shall be in full force and effect and shall not have been vacated, reversed, modified (other than with the written consent of Administrative Agent), appealed or stayed in any respect;

(i) Administrative Agent shall have received an initial Budget, which shall be in form and substance satisfactory to Administrative Agent in its sole discretion;

(j) Administrative Agent shall be reasonably satisfied with all adequate protection payments, critical vendor payments and all other material motions and orders filed in the Chapter 11 Case requiring the expenditure of cash;

(k) Administrative Agent shall be reasonably satisfied with the Borrower's cash management systems;

(l) All of the "first day orders" entered by the Court at the time of the Chapter 11 Case shall be in form and substance reasonably satisfactory to Administrative Agent; and

(m) The Administrative Agent shall have received such other documents as it shall have reasonably requested or required.

6.02 Conditions to Each Advance. The agreement of Lenders to make any Advance hereunder is subject to the satisfaction of the following conditions precedent as of the date such Advance is made:

(a) The representations and warranties of the Borrower set forth in this Agreement and the other DIP Financing Documents to which it is a party shall be true and correct in all material respects (except to the extent that any representation and warranty by its terms is only made as of another date, in which event such representation and warranty shall be true and correct in all material respects as of such other date);

(b) No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date; *provided, however,* that Administrative Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default; and

(c) The aggregate amount of such Advance shall not exceed the maximum amount of the Advances permitted under this Agreement.

Each acceptance of an Advance by Borrower hereunder shall constitute a representation and warranty by each Borrower as of the date of such Advance that the conditions contained in this subsection shall have been satisfied.

ARTICLE VII COLLATERAL SECURITY

7.01 Grant of Security Interest. As security for the prompt payment in full of all Obligations and subject to the terms of the DIP Orders, each Borrower hereby pledges and grants to Administrative Agent for the benefit of the Lenders a continuing general lien upon, and security interest in, all of the Collateral in which such Borrower has rights. The security interests granted hereunder shall extend and attach to all Collateral which is presently in existence or hereafter acquired and which is owned by Borrower or in which Borrower has any interest, whether held by Borrower or by others for the

Borrower's account, wherever located, and whether acquired by Borrower before, on or after the Petition Date and as described in Section 541 of the Bankruptcy Code.

7.02 Lien Perfection.

(a) Administrative Agent's liens and security interests in and to the Collateral shall attach to all Collateral without further action on the part of Administrative Agent or the Borrower. The liens and security interests and priority granted to the liens and security interests in favor of Lender pursuant to any DIP Order and hereunder shall be perfected by operation of law upon execution of such DIP Order by the Court. Lender shall not be required to file any UCC-1 financing statements, mortgages or any other document, or take any other action (including possession of any of the Pre-Petition Collateral or Post-Petition Collateral) in order to validate or perfect the liens and security interests granted to Lender hereunder or under any of the other DIP Financing Documents, as all such liens and security interests shall be deemed automatically perfected as of the date of the applicable DIP Order. If Administrative Agent shall, in its discretion, choose to file such UCC-1 financing statements (or amendments to or continuations of any existing financing statements), mortgages and otherwise confirm perfection of such liens and security interests, all such financing statements, mortgages or similar instruments shall be deemed to have been filed or recorded at the time and on the date of entry of applicable DIP Order. Lender may, in its discretion and at its sole cost, file a certified copy of the Interim Order or the Final Order in any filing or recording office in any jurisdiction in which Borrower has or maintains any Pre-Petition Collateral or Post-Petition Collateral or an office or is organized. The liens and security interests granted to Administrative Agent pursuant to the provisions of this Agreement and pursuant to any of the other DIP Financing Documents shall be in addition to all liens conferred upon Administrative Agent by the Court pursuant to the terms of the DIP Orders.

(b) The liens and security interests granted pursuant to the terms of this Agreement and the other DIP Financing Documents, and the liens and security interests conferred upon Administrative Agent pursuant to the DIP Orders, shall (subject, in each case, to the Carve-Out) constitute (i) pursuant to Section 364(c)(1) of the Bankruptcy Code, a "super-priority" administrative expense claim except to the extent of, and up to, the Carve-Out, (ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, a first priority lien upon or security interest in all of the Collateral subject only to the Carve-Out and valid, enforceable, properly perfected, and unavoidable prepetition liens (including any liens that are perfected after the Petition Date with a priority that relates back to a date prior to the Petition Date as permitted under Bankruptcy Code section 546(b)) that are senior to the liens granted to Pre-Petition Lenders concurrently with the initial closing of the Pre-Petition Credit Agreement; (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a first priority, senior priming lien upon or security interest in all of the Collateral, subject only to the Carve-Out and valid and unavoidable Permitted Liens that are in existence on the Petition Date and that, under applicable law, are senior to and have not been subordinated to the liens and security interests of Administrative Agent in connection with the Pre-Petition Credit Agreement; and (iv) pursuant to Section 364(c)(3) of the Bankruptcy Code, a junior priority lien upon or security interest in all of the Collateral that is subject to a validly perfected and unavoidable Permitted Lien in existence at the time of the commencement of the Chapter 11 Case or in existence at the time of such commencement that is perfected subsequent to such commencement as permitted by Section 546(c) of the Bankruptcy Code, in each case, only to the extent the Permitted Lien has not been subordinated to the liens and security interest of Lender in connection with the Pre-Petition Credit Agreement. Except as expressly provided in the DIP Orders, no expenses, costs or charges in connection with the Chapter 11 Case shall be charged against the Collateral or Administrative Agent or any Lender under Section 506(c) of the Bankruptcy Code, and the Borrower hereby waives any rights they have to seek such charges under Section 506(c) of the Bankruptcy Code.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

8.01 Existence. The Borrower is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to do business as a foreign limited liability company in all places where necessary in light of the business it conducts and intends to conduct and the Property it owns except to the extent such failure to be so qualified as a foreign limited liability company could not reasonably be expected to have a Material Adverse Effect. No filing, recording, publishing or other act by the Borrower that has not been made or done is necessary in connection with the existence or good standing of the Borrower (a) in its jurisdiction of organization or (b) in any other jurisdiction if, solely with respect to this clause (b), such failure to file, record or publish could reasonably be expected to have a Material Adverse Effect.

8.02 Financial Condition. (a) The annual unaudited financial statements of Peregrine and its consolidated Subsidiaries for the fiscal year ending December 31, 2015, fairly present in all material respects the financial condition of Peregrine and its consolidated Subsidiaries as of the date thereof, all in accordance with GAAP (subject, in the case of unaudited financial statements, to normal year-end adjustments), and (b) the financial reports of the Borrower furnished to the Administrative Agent pursuant to Sections 9.01(a), (b) and (c), fairly present in all material respects the financial matters described therein. As of the date of such financial statements, Peregrine and its consolidated Subsidiaries (including the Borrower) did not have any material contingent liabilities or material liabilities for Taxes, except as referred to or reflected or provided for in such financial statements. The Borrower has no material contingent liabilities or material liabilities for Taxes, except (i) as referred to or reflected or provided for in such financial statements, (ii) as arising solely from the execution and delivery of the DIP Financing Documents, (iii) as permitted by Section 10.01, (iv) as arose in the ordinary course of business, or (v) as set forth on Schedule 8.02.

8.03 Action. The Borrower has full power, authority and legal right to execute and deliver, and to perform its obligations under, the Transaction Documents to which it is or is intended to be a party, subject to entry of an applicable order of the Court. Subject to entry of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance by the Borrower of each of the Transaction Documents to which it is or is expressly intended to be a party have been duly authorized by all necessary action on the part of the Borrower. Subject to entry of the Interim Order (or the Final Order, when applicable) each of the Transaction Documents to which the Borrower is a party has been duly executed and delivered by the Borrower and is in full force and effect and constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law), and bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditor's rights generally.

8.04 No Breach. The execution, delivery and performance by the Borrower of each of the DIP Financing Documents to which it is a party do not and will not: (a) require any consent or approval of any Person that has not been obtained and remains in full force and effect (other than Government Approvals that are not required to be obtained for the then relevant stage of development of the Project and approvals of the Court, including the DIP Orders), except as could not reasonably be expected to have a Material Adverse Effect, (b) violate in any material respect any provision of any Government Rule or Government Approval applicable to the Borrower or the Project, except as could not reasonably be expected to have a Material Adverse Effect, (c) violate, result in a breach of or constitute a default under any Material Contract to which the Borrower is a party or by which it or its Property is bound, except as

could not reasonably be expected to have a Material Adverse Effect, (d) violate, result in a breach of or constitute a default under any organizational documents of the Borrower, or (e) result in, or create any Lien (other than a Permitted Lien) upon or with respect to, any of the Properties now owned or hereafter acquired by the Borrower.

8.05 Government Approvals; Government Rules.

(a) Other than as set forth on Schedule 8.05 – Part B, all material Government Approvals necessary in connection with the development, construction, ownership and operation of the Project have been duly obtained, were validly issued, are in full force and effect, and are not the subject of any pending appeal and all applicable appeal periods have expired, are held in the name of the Borrower and are free from conditions or requirements which the Borrower does not reasonably expect to be able to satisfy on or prior to the commencement of the relevant stage of the Project. All such Government Approvals that were previously obtained or are in effect on the Effective Date are set forth on Schedule 8.05 – Part A.

(b) In its reasonable judgment, the Borrower does not believe that any material Government Approval which has not been obtained by the Borrower as of the Effective Date, but which shall be required by applicable Government Rule to be obtained in the future by the Borrower for the Project, shall not be obtained in due course by the Borrower upon or prior to the commencement of the appropriate stage of development of the Project for which such Government Approval would be required, or shall contain any material condition or requirements, the compliance with which the Borrower does not reasonably expect to satisfy on or prior to the commencement of the appropriate stage of development of the Project. The Project, if developed as contemplated by the Material Contracts, will conform to and comply in all material respects with all covenants, conditions, restrictions and reservations in the applicable Government Approvals and all applicable Government Rules.

(c) Other than as set forth on Schedule 8.05 – Part C, the Borrower is not in violation of, and is in compliance in all material respects with, all applicable Government Rules and Government Approvals.

8.06 Proceedings. Other than as set forth on Schedule 8.06, there is no action, suit or proceeding at law or in equity or by or before any Government Authority or arbitral tribunal now pending or, to the Borrower's Knowledge, threatened in writing against the Borrower or with respect to any DIP Financing Document, Material Contract or Government Approval related to the Project that could reasonably be expected to have a Material Adverse Effect.

8.07 Environmental Matters.

(a) Other than as set forth on Schedule 8.07, the Borrower is in compliance, in all material respects, with all Environmental Laws and all material Government Approvals (each of which is in full force and effect) required under any Environmental Laws for the current stage of development of the Project. There are no actions pending or, to the Borrower's Knowledge, threatened, (i) to challenge, revoke, cancel or terminate such Government Approval, or (ii) to limit or modify any such Government Approvals that, in either case, could reasonably be expected to have a Material Adverse Effect.

(b) To the Borrower's Knowledge, there are no past or present circumstances, activities, events, incidents, actions, omissions, conditions or occurrences in any way relating to the Project, including the Property of the Project, that could reasonably be expected (i) to form the basis of an Environmental Claim against the Borrower with respect to any portion of the Project (including Property

of the Project), or (ii) to cause the Project, or any Property of the Project, to be subject to any material adverse restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(c) There are no pending and, to the Borrower's Knowledge, no past or threatened (in writing) Environmental Claims, in each case against the Borrower with respect to the Project that could reasonably be expected to have a Material Adverse Effect.

(d) The Borrower with respect to the Project (including the Property of the Project) has not Released, transported or arranged for the Release or transportation of Hazardous Materials at, on, under or, to the Borrower's Knowledge, from the Project (including the Property of the Project) in a manner which could reasonably be expected to form the basis of a material Environmental Claim. To the Borrower's Knowledge, no other Person has Released, transported, or arranged for the Release or transportation of Hazardous Materials at, on, under or from the Project in a manner which could reasonably be expected to form the basis of a material Environmental Claim.

(e) As of the Effective Date, there have been no material environmental investigations, studies, audits, reviews or other analyses relating to environmental site conditions that have been conducted by, or which are in the possession of, the Borrower in relation to the Project (or the Property of the Project) which have not been provided or otherwise made available to the Administrative Agent and the Lenders.

8.08 Taxes. Except as set forth on Schedule 8.08, the Borrower has timely filed or caused to be filed all income tax and all other material tax returns and material tax reports required to be filed with respect to it and, except to the extent subject to a Contest (or for which payment is excused under the Bankruptcy Code), has paid or caused to be paid (a) all material post-petition Taxes imposed on it or on its income or profits or on any of its Property prior to the date on which any penalties may attach and (b) all other post-petition material claims which might, if not paid, become a tax Lien, other than a Permitted Lien, upon its Property. The Borrower shall promptly pay any valid, final judgment rendered upon the conclusion of the relevant Contest, if any, enforcing any such material Tax or claim and cause it to be satisfied of record (or for which payment is excused under the Bankruptcy Code). Except as set forth on Schedule 8.08, all tax returns required to be filed with respect to the Borrower are true and correct in all material respects, and, except as set forth on Schedule 8.02 and Schedule 8.08, the Borrower has not received notice that there are any tax audits on-going as of the Effective Date with respect to such tax returns by any Government Authority. The Borrower shall have the right to Contest the validity or amount of any such material Tax or claim.

8.09 ERISA; ERISA Event.

(a) The Borrower does not sponsor, maintain, administer, contribute to, participate in, or have any obligation to contribute to, any Pension Plan or Multiemployer Plan nor during the six-year period immediately preceding the date hereof has the Borrower established, sponsored, maintained, administered, contributed to, participated in, or had any obligation to contribute to any Pension Plan or Multiemployer Plan. The Borrower has not incurred any unsatisfied Withdrawal Liability. The Borrower does not sponsor, maintain, or contribute to, or have any obligation (contingent or otherwise) with respect to an "employee welfare benefit plan," as defined in Section 3(1) of ERISA, including without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by the Borrower in its sole discretion at any time without any material liability or that provides for post termination of employment medical or life insurance benefits, other than as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 or similar state Government Rule.

(b) As of the Effective Date (and otherwise, only with respect to matters that could not reasonably be expected to result in a Material Adverse Effect), (i) Borrower has no liability (secondary or otherwise) with respect to a Pension Plan or Multiemployer Plan and no ERISA Affiliate sponsors, maintains, administers, contributes to, participates in, or has any obligation to contribute to, or any liability (secondary or otherwise) under, any Pension Plan or Multiemployer Plan nor during the six-year period immediately preceding such date has the Borrower had any liability (secondary or otherwise) with respect to a Pension Plan or a Multiemployer Plan nor has any ERISA Affiliate established, sponsored, maintained, administered, contributed to, participated in, or had any obligation to contribute to or liability (secondary or otherwise) under any Pension Plan or Multiemployer Plan, (ii) no ERISA Affiliate has incurred any unsatisfied Withdrawal Liability and (iii) no ERISA Affiliate, sponsors, maintains, or contributes to, or has any obligation (contingent or otherwise) with respect to an “employee welfare benefit plan,” as defined in Section 3(1) of ERISA, including without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by any ERISA Affiliate in its sole discretion at any time without any material liability or that provides for post termination of employment medical or life insurance benefits, other than as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 or similar state Government Rule.

(c) As of the Effective Date (and otherwise, only with respect to matters that could not reasonably be expected to have a Material Adverse Effect), no ERISA Event has occurred, and to the Borrower’s Knowledge, no set of circumstances or events exist that could result in an ERISA Event.

(d) Neither the Borrower nor any ERISA Affiliate has any liability under ERISA or the Code that could reasonably be expected to have a Material Adverse Effect, and to the Borrower’s Knowledge, no set of circumstances or events exists that could constitute such liability.

8.10 Nature of Business; Property. The Borrower is not engaged in any business other than (a) the execution, delivery and performance of the DIP Financing Documents and the other Transaction Documents pursuant to which the Borrower receives services from Project Parties, in each case, to which it is a party, (b) the storage of natural gas, related hub services, natural gas processing, transportation of natural gas, oil and NGLs, NGLs extraction, oil and gas exploration, and EOR Operations, in each case at the Ryckman Creek Field, (c) trading activity with respect to natural gas, oil and NGLs produced from the Ryckman Creek Field in accordance with this Agreement, (d) holding right, title and interests in all natural gas purchased, stored and traded for its own account, and (e) activities reasonably and directly related to the foregoing. On any given date that this representation is made (i) the aggregate rights of the Borrower in respect of the Project, including the rights of the Borrower pursuant to any and all Contracts, are all of the rights necessary for the efficient ownership, development, construction, operation and, if applicable, maintenance of the Project as of such date, and (ii) all of such rights are part of the Collateral, other than such rights, in the case of subclauses (i) and (ii), the absence of which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The Collateral includes substantially all of the tangible and intangible Property of the Borrower.

8.11 Rights to Collateral. The Borrower has legal and valid interests in and rights to the Collateral, free from Liens other than Permitted Liens.

8.12 Security Interest. Subject to, and upon entry of, the DIP Orders, the provisions of this Agreement are effective to create, in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on and security interest in all of the Collateral, and, other than as set forth in Section 7.02, to create a perfected Lien on and security interest in all right, title and interest of the Borrower and Holdco in the Collateral covered hereby, free of all Liens other than Permitted Liens, and prior and superior to all other Liens other than Permitted Liens.

8.13 Ownership. The Borrower has no Subsidiaries. The authorized and outstanding equity interests of Borrower and Holdco, and each legal and beneficial holder thereof as of the Effective Date, are set forth on Schedule 8.13 by class and percentage of ownership. Except for rights and obligations set forth on Schedule 8.13, there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which Borrower or any of its members, is bound relating to the issuance, transfer, voting or redemption of units of Borrower's equity interests or any pre-emptive rights held by any Person with respect to Borrower's equity interests. Borrower has not issued any securities convertible into or exchangeable for units of its equity interests or any options, warrants or other rights to acquire such securities convertible into or exchanges for its units.

8.14 Status; Investment Company Regulation. The Borrower is not an "investment company," is not required to be registered as an investment company under the Investment Company Act of 1940, and is not an "investment advisor" within the meaning of the Investment Company Act of 1940.

8.15 Material Contracts.

(a) The Borrower has delivered to the Administrative Agent a true and correct copy of each Material Contract as in effect on the date of its delivery to the Administrative Agent and each amendment, modification or supplement to each such Material Contract, in each case as required to be delivered pursuant to this Agreement. Except as permitted pursuant to Section 10.15, none of the Material Contracts has been amended, modified or supplemented, and all of the Material Contracts (other than those Material Contracts (i) that are not required to be entered into pursuant to this Agreement as of the date of the making of this representation, (ii) that have been cancelled or terminated as permitted under this Agreement, or (iii) that have expired in accordance with their terms) are in full force and effect. All conditions precedent to the obligations of Borrower, Holdco and Peregrine, as applicable, under the Material Contracts and, to the Borrower's Knowledge, of each counterparty under the Material Contracts, have been satisfied or waived except for such conditions precedent which need not be satisfied until a later stage of development of the Project, and to the Borrower's Knowledge, there is no reason any such condition to be satisfied at a later stage of development of the Project will not be timely and satisfactorily completed. Except as set forth on Schedule 8.15, the Borrower is not in default with respect to any material covenant or material obligation set forth in any Material Contract and, to the Borrower's Knowledge, no condition has occurred and is continuing which with the giving of notice or lapse of time or both would result in a default by the Borrower under any Material Contract. To the Borrower's Knowledge, except as has been disclosed to the Administrative Agent, no counterparty is in default of any material covenant or material obligation set forth in any Material Contract and no condition has occurred and is continuing which with the giving of notice or lapse of time or both would result in a default by any such counterparty under any Material Contract.

(b) All of the representations and warranties of the Borrower in the DIP Financing Documents are true and correct in all material respects as of the date hereof (unless such representations and warranties relate to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date). All of the representations and warranties of the Borrower and to Borrower's Knowledge, all representations and warranties of each other counterparty, in the Material Contracts are true and correct in all material respects as of the date made (unless such representations and warranties relate to an earlier date, in which case such representations and warranties of the Borrower are true and correct in all material respects as of such earlier date).

(c) No event or condition, other than the filing of the Chapter 11 Case, has occurred and is continuing that has had or is having a material adverse effect on the ability of the Borrower to perform its obligations under any Material Contract to which it is a party. To the Borrower's Knowledge, except as has been disclosed to the Administrative Agent, no event or condition has occurred and is

continuing that has had or is having a material adverse effect on the ability of any other party to perform its obligations under any Material Contract to which it is a party.

8.16 Use of Proceeds. The proceeds of each Loan will be used solely in accordance with, and solely for the applicable purposes contemplated by, Section 9.08.

8.17 Disclosure. The written information furnished to the Administrative Agent, the Advisors or the Lenders by or on behalf of the Borrower in connection with the negotiation of, and the extension of credit under, this Agreement or the other DIP Financing Documents or the transactions contemplated by the Material Contracts, including any reports, financial statements, certificates or other documents prepared by the Borrower, read together and taken as a whole, did not, as of the applicable dates thereof, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading; *provided that*, with respect to any projected financial information, forecasts, estimates, or forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time; *provided, further*, that the representation contained in this Section 8.17 does not cover the information contained in reports delivered to the Administrative Agent or the Lenders that were prepared by the Advisors or any consultant hired by the Borrower or the Administrative Agent in conjunction with the Transactions.

8.18 Fees. On the Effective Date, the Borrower will have no obligation to any Person in respect of any finder's, advisory, broker's or investment banking fee other than fees payable under this Agreement and the fees described on Schedule 8.18.

8.19 Insurance. All insurance required to be obtained by the Borrower has been obtained and is in full force and effect and satisfies the requirements of Section 9.05 and Schedule 9.05 and the Material Contracts in all material respects. Except as disclosed to the Administrative Agent, all premiums due and payable on all such insurance have been paid.

8.20 Indebtedness, Liens and Equity Interests. The Borrower (a) has not incurred any Indebtedness other than Permitted Indebtedness, (b) is not subject to any Lien that is not a Permitted Lien, and (c) has not issued any Disqualified Capital Stock that remains outstanding.

8.21 Absence of Default. No Default or Event of Default has occurred and is continuing.

8.22 Anti-Terrorism Laws.

(a) The Borrower is not and, to the Borrower's Knowledge, none of its Affiliates, officers or directors is, in violation of any Government Rule relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as amended from time to time.

(b) The Borrower is not and to the Borrower's Knowledge, no Affiliate, officer, director, broker or other agent of the Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

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

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked Person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) at its official website or any replacement website or other replacement official publication of such list.

(c) Neither the Borrower nor, to the Borrower’s Knowledge, any broker or other agent of the Borrower acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

8.23 Event of Loss. No Event of Loss has occurred and is continuing as of the Effective Date except as disclosed on Schedule 8.23.

8.24 No Material Adverse Effect. Since December 31, 2015 and except as set forth on Schedule 6.01(p), no change, development, circumstance or event of Force Majeure (taking into account any insurance with respect to such event of Force Majeure) has occurred and is continuing that could reasonably be expected to have a Material Adverse Effect (other than as customarily occurs as a result of events leading up to and following the commencement of a case under chapter 11 of the Bankruptcy Code and the commencement of the Chapter 11 Case).

ARTICLE IX AFFIRMATIVE COVENANTS

Until the Termination Date shall have occurred, the Borrower covenants and agrees that:

9.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) On the Closing Date and thereafter no later than 5 Business Days before the end of each consecutive two-week period, a Budget, together with a comparison of the Borrower’s actual results to the cash flow forecasted by the Borrower for such period. Each Budget shall be for the immediately following thirteen-week period and subject to the approval of Agent in all respects;

(b) no later than the Friday of the first full week of each month, a written twenty-four (24) month rolling forecast of the Borrower’s annual business plan and projected operating budget;

(c) on or before the fourth business day of each week, commencing with the first week following the date hereof, (i) an Approved Budget Variance Report, certified as true and correct by the Borrower's chief financial officer, chief executive officer, or chief restructuring officer and (ii) a cash flow and disbursement forecast for the next succeeding thirteen weeks;

(d) together with each delivery of a Budget pursuant to Section 9.01(a), a management report providing a status update including key operating and financial metrics in form and content acceptable to the Agent;

(e) as soon as possible and in any event within five (5) days after the Borrower's Knowledge of the occurrence of any Default or Event of Default, a notice from the Borrower setting forth details of such Default or Event of Default and the action which the Borrower proposes to take or has taken with respect thereto;

(f) not more than ten (10) Business Days after delivery or receipt thereof, a copy of all material written communications given or received by the Borrower to or from, and all material filings made with, any Government Authority (including FERC), in each case outside of the ordinary course of business;

(g) as soon as possible and in any event within five (5) days after the Borrower's Knowledge of the occurrence of (i) a claim under any insurance policy of the Borrower in excess of \$500,000, individually or in the aggregate, (ii) one or more Events of Loss that the Borrower reasonably expects will result in losses (without giving effect to the receipt of Loss Proceeds) to the Borrower in excess of \$500,000, individually or in the aggregate, or (iii) any material and adverse action, suit or proceeding at law or in equity or by or before any Government Authority or arbitral tribunal with respect to the Borrower, a notice from the Borrower setting forth the details of each such event or development requiring such notice and any action taken or proposed to be taken with respect thereto together with copies of any material document relating thereto in the possession or control of the Borrower or any agent of the Borrower, or readily capable of being obtained by the Borrower;

(h) promptly upon and in any event within five (5) Business Days of (i) delivery pursuant to a Material Contract, copies of all material notices or other material documents delivered by the Borrower, (ii) such documents becoming available, copies of all material notices or other material documents received by the Borrower pursuant to any Material Contract (in each case, such as any notice or other document relating to a failure by the Borrower or another party to perform any of its covenants or obligations under such Material Contract, termination of a Material Contract or a Force Majeure under a Material Contract), and (iii) delivery or receipt thereof, copies of all material and adverse notices delivered or received under any Contract of the Borrower evidencing Indebtedness (other than the DIP Financing Documents), but excluding any ministerial notice or any notice provided in the ordinary course of business);

(i) prompt notice of any material change to the design of the Project;

(j) prompt notice of any material tax audits by any Government Authority with respect to tax returns of the Borrower;

(k) within ten (10) Business Days after receipt thereof, copies of all material correspondence with any Government Authority related to any remediation activities conducted by the Borrower at the Canyon Creek Facility or the Ryckman Creek Field; and

(l) promptly following any request therefor, (i) such other information regarding the Project, the Properties of the Borrower, the operations, business affairs, or financial condition of the Borrower, or compliance with the terms of any Transaction Document, or (ii) any forecasts, budgets, projections, financial models or other financial information, as the Administrative Agent or any Lender may reasonably request.

9.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent written notice of the following promptly after the Borrower becomes aware thereof:

(a) the occurrence of any ERISA Event or liability under ERISA or the Code that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or in the enforcement of liability against the Borrower in excess of \$500,000;

(b) the existence of any Environmental Claim that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or in liability of the Borrower in excess of \$500,000; and

(c) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice pursuant to this Section 9.02 shall be accompanied by a statement of a Financial Officer of the Borrower setting forth the details of the event or events requiring such notice and any action taken or proposed to be taken with respect thereto.

9.03 Existence. The Borrower will do or cause to be done all things necessary and lawful in order to preserve, renew and keep in full force and effect its legal existence as a limited liability entity.

9.04 Payment of Obligations. The Borrower will pay its post-petition obligations, including (a) all material post-petition Tax liabilities imposed upon it or upon its Property, except to the extent subject to a Contest, and (b) all material post-petition claims (including, claims for labor, materials, supplies or services) which might, if not paid, result in a Lien upon its Property, unless, in each case, the validity or amount thereof is being Contested, and (c) all material post-petition obligations under the Material Contracts.

9.05 Maintenance of Properties; Insurance.

(a) The Borrower will acquire, maintain and preserve the Collateral and all elements of the Project, taken as a whole, (i) in good working order and condition, ordinary wear and tear excepted and subject to normal repair and maintenance of such facilities, (ii) in substantial conformity with all Transaction Documents and prudent engineering and operating practices consistent with like facilities, and (iii) in material conformity with all Government Rules, Government Approvals and insurance policies.

(b) The Borrower will maintain, or cause to be maintained, insurance covering the Borrower and its Properties (including the Project) in effect at all times in all material respects in such amounts and covering such risks as is usually carried by companies engaged in similar business and owning similar properties in the same general area in which the Borrower operates or as is reasonably requested by the Administrative Agent or the Required Lenders, such insurance coverage to include limits and coverage provisions sufficient to satisfy the requirements set forth in the Transaction Documents but in no event less than the limits and coverages described in Schedule 9.05 hereto, except to the extent any such insurance is not available on commercially reasonable terms and conditions (with commercial and

reasonable being determined as agreed among the Insurance Consultant, the Borrower, the Borrower's insurance representative and the Administrative Agent). In addition, the insurance shall conform to the general terms and conditions described in Schedule 8.05 unless such terms and conditions, limits and coverages become unavailable on commercially reasonable terms and conditions. Should any of the coverage or terms and conditions become unavailable on commercially reasonable terms and conditions, prior to renewal, the Borrower shall notify the Administrative Agent. The Borrower shall cause the Administrative Agent to be shown as additional insured or loss payee or both, as applicable, with respect to all such policies of insurance.

(c) The Borrower will provide copies of endorsements to Borrower's insurance policies evidencing the coverages described in Sections 2(a) and (b) of Schedule 8.05.

9.06 Books and Records; Inspection Rights.

(a) The Borrower will keep proper books of record and account in all material respects, which shall reasonably reflect its business and activities, revenues and assets, and costs and expenses in connection with the Project and shall include entries which are in all material respects true and correct entries, in accordance with GAAP.

(b) The Borrower will at any time and from time to time upon reasonable notice and during regular business hours, but subject nevertheless to the provisions of Section 13.09, permit any Lender, the Administrative Agent, the Independent Engineer and any of their respective agents, auditors, appraisers, and representatives to examine and make copies of and abstracts from the records and books of account of the Borrower, to examine the material Properties of the Borrower, and to discuss the affairs, finances and accounts of the Borrower and of the Project with the Borrower and its officers, accountants and engineers. If requested by the Lenders or the Administrative Agent, the Borrower shall meet with the Lenders or the Administrative Agent (which meeting may occur by conference call, if acceptable to the participating Persons) to discuss the affairs, finances and accounts, and the Project, once per calendar year (or more often after the occurrence and during the continuance of a Default or an Event of Default, if reasonably requested by the Administrative Agent or the Lenders). In addition, Administrative Agent may conduct or engage a third-party firm to conduct an audit, appraisal, inspection or field examination of the Collateral, at any time in its sole reasonable discretion, and at the sole expense of Borrower.

(c) At any time upon reasonable notice and during regular business hours, the Borrower will provide the Independent Engineer access to the Project and its Properties, to the Borrower's records concerning the Project and its Properties and to any other information that the Administrative Agent, any Lender or the Independent Engineer may reasonably request in order for the Independent Engineer to timely and accurately furnish to the applicable Persons the reports of the Independent Engineer required pursuant to this Agreement and the Disbursement Agreement, which reports will include an annual report of the Independent Engineer.

(d) As promptly as reasonably practicable after receipt of a written request from Administrative Agent, Borrower shall make its financial advisor(s) and restructuring officer(s) available to Administrative Agent, at reasonable times during regular business hours, to discuss the operations, financial performance, expense reduction program and cash flow reports, as applicable, of the Borrower and such other matters as Administrative Agent may reasonably request.

9.07 Compliance with Laws. Except as excused under the Bankruptcy Code, the Borrower will (a) comply in all material respects with all Government Rules applicable to it or its Property or the Project, and will use commercially reasonable efforts to cause all Persons using or occupying the Project

to so comply, and (b) obtain and maintain all material Government Approvals required by applicable Government Rules in connection with the Project.

9.08 Use of Proceeds. (a) In accordance with and subject to the DIP Orders and any other applicable order of the Court, the proceeds of the Loans shall be used by Borrower solely for one or more of the following purposes and then only in accordance with the Budget: (i) to finance project costs and operating expenses in connection with the Project and the NRU/Supplemental Subproject solely to the extent such project costs and operating expenses are identified in the Budget and approved by Administrative Agent in its sole discretion; (ii) to fund, after application of all other available cash, post-petition working capital needs of the Borrower, including, without limitation, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. §1930; (iii) to pay the fees, interest and transaction expenses associated with the closing of the transactions described herein, including payment of Professional Fees and expenses incurred by Borrower in the Chapter 11 Case; (iv) to pay any allowable interest with respect to Pre-Petition Debt, other Pre-Petition Liabilities and adequate protection payments, to the extent, if any, authorized by the DIP Orders or other order of the Court; and (v) to pay certain other costs and expenses of administration of the Chapter 11 Case.

(b) Proceeds of the DIP Financing Documents, amounts paid from the Carve-Out Reserve or cash collateral shall not be used (i) to permit the Borrower, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (a) the validity, perfection or priority of security interests in favor of the Pre-Petition Lenders or any Lender hereunder, or (b) the enforceability of the obligations of the Borrower under the Pre-Petition Credit Agreement, any other Pre-Petition Loan Document, any DIP Financing Documents or the this Agreement, (ii) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against the Pre-Petition Lenders or any Lender hereunder and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims, (iii) to investigate, commence, prosecute or defend any claim or proceeding or cause of action to disallow or challenge the obligations of Borrower under the Pre-Petition Credit Agreement, any other Pre-Petition Financing Document or the DIP Financing Documents, or (iv) to fund acquisitions, capital expenditures, capital leases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget, approved by Administrative Agent and otherwise permitted hereunder; provided that a Committee and its professionals shall be permitted to investigate the liens, claims, and potential causes of action against the Pre-Petition Lenders in connection with the Pre-Petition Credit Agreement in an amount not to exceed the amount set forth in the Final Order.

9.09 Completion. The Borrower will continue to develop, construct and operate the Project in a manner which is consistent in all material respects with applicable Government Rules, its insurance policies, prudent engineering practices and the plans delivered under the Pre-Petition Credit Agreement.

9.10 Environmental Matters. The Borrower will: (a) operate its business and conduct operations on all Property of the Borrower, including the Project, in compliance in all material respects with all Environmental Laws, (b) assure that no Hazardous Materials are Released by any Person on, under or into any Property owned or operated by the Borrower except in compliance with Environmental Laws in all material respects and then only in a manner that will not result in the incurrence of any remedial or corrective action obligation by the Borrower or the Project pursuant to Environmental Laws], (c) require all agents, consultants and other Persons conducting operations on any Property owned or operated by the Borrower (including the Project) to act in compliance in all material respects with Environmental Laws and in a manner that does not endanger public health or welfare or the environment, (d) if any Hazardous Material is Released by any Person on any Property owned or operated by the Borrower, promptly commence and diligently pursue to completion all corrective and remedial actions required to satisfy in all material respects all Environmental Laws applicable to such Releases to the extent necessary to bring such Properties into compliance with Environmental Laws in all material respects and to discharge any Environmental Claim, and (e) timely apply for, obtain, and maintain in full

force and effect all material Government Approvals required for the operation of the Project under Environmental Laws.

9.11 Maintain Collateral. Subject to Section 10.03(c), the Borrower will maintain good and valid rights to and interests in the Collateral, subject to no Liens other than Permitted Liens.

9.12 Further Assurances. The Borrower will (a) promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Administrative Agent may reasonably request in order to fully give effect to the pledges and encumbrances of its interests and Properties purported to be covered by hereby, (b) promptly correct, or cause to be corrected, any defect or error that may be discovered in any DIP Financing Document or in the execution, acknowledgment or recordation thereof and execute, acknowledge and deliver, and record and re-record, file and re-file and register and re-register, any and all such further acts, deeds, conveyances, mortgages, deeds of trust, trust deeds, assignments, estoppel certificates, consents, financing statements and continuations thereof, notices of assignment, transfers, certificates, assurances and other instruments as the Administrative Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes and intents of this Agreement or any other DIP Financing Document and (ii) to better assure, convey, grant, assign, transfer, preserve, protect and confirm unto the Secured Parties the rights granted (or that should have been granted pursuant to the express provisions of the DIP Financing Documents) to the Secured Parties under any DIP Financing Document or under any other instrument executed in connection with any DIP Financing Document or that the Borrower may be or become bound to convey, mortgage or assign to the Secured Parties or the Administrative Agent in order to comply with or perform under any DIP Financing Document, and (c) take all other actions and make all other assurances required by the DIP Financing Documents. The Borrower will furnish to the Administrative Agent evidence satisfactory to it of every such recording, filing or registration, and to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by this Agreement and/or the DIP Orders.

9.13 Performance of Transaction Documents. Except as modified by the DIP Orders, the Borrower shall perform and observe all terms and provisions of each Material Contract and DIP Financing Document to which it is a party, maintain such Material Contracts, and DIP Financing Documents in full force and effect in accordance with their terms (except to the extent any such Contract has been cancelled or terminated as permitted under this Agreement or the term of any such Contract expires in accordance with its terms), and enforce such Material Contracts and DIP Financing Documents in accordance with their terms, except in each case, with respect to Material Contracts (other than DIP Financing Documents), as individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

9.14 Compliance with Organizational Documents. The Borrower will observe and maintain compliance in all material respects with all company formalities as a separate legal entity in accordance with its organizational documents.

9.15 Risk Management Policy. The Borrower will observe and maintain compliance in all material respects with the Risk Management Policy then in effect.

9.16 Deposits into Pledged Accounts. The Borrower shall transfer and deposit, or cause to be transferred and deposited, all Cash Flow and all other amounts, payments and revenues of every nature and kind received by, or on behalf of, the Borrower from whatever sources to the applicable Pledged Accounts.

9.17 Separate Operations. Other than those items listed in Schedule 9.17, the Borrower shall maintain its existence separate and distinct from any other Person, including taking the following actions, as appropriate:

(a) maintaining in effect its existence, rights and franchises as a Delaware limited liability company and obtaining and preserving its qualification to do business in each jurisdiction in which such qualification is or will be necessary to preserve the validity and enforceability of this Agreement and each other instrument or agreement necessary or appropriate to properly administer this Agreement and to permit and effectuate the transactions contemplated hereby and thereby;

(b) maintaining its own deposit accounts, separate from those of Peregrine, PRM, Holdco, any of its managers, directors or officers and their respective Affiliates;

(c) conducting no material transactions between the Borrower and any of its Affiliates, other than entering into, on an arm's-length basis, and performing the Transaction Documents to which it is party;

(d) allocating fairly and reasonably the cost of any shared overhead expenses, including office and field office space, with Peregrine, PRM, Holdco, any of its managers, directors or officers or any of their respective Affiliates;

(e) conducting its affairs separately from those of Peregrine, PRM, Holdco, any of its managers, directors or officers or any of their respective Affiliates and maintaining accurate and separate books, records and accounts and financial statements, including in connection with the ownership and operation of the Project;

(f) conducting business solely in its own name and not that of any other Person, including Peregrine, PRM, Holdco, any of its managers, directors or officers or any of their respective Affiliates, and at all times using its own stationery, invoices and checks separate from those of Peregrine, PRM, Holdco, any of its managers, directors or officers or any of their respective Affiliates;

(g) not incurring any liability for, and not holding itself out as having agreed to pay or guarantee, or as otherwise being liable for, the obligations of Peregrine, PRM Holdco, any of its managers, directors or officers or any of their respective Affiliates;

(h) insuring that any financial reports prepared by the Borrower disclose the Borrower's ownership of the Project and the Borrower repayment to Peregrine of all amounts owed by the Borrower with respect to the Project;

(i) maintaining all of its assets in its own name and not commingling its assets with those of any other Person;

(j) paying its own operating expenses and other liabilities out of its own funds;

(k) maintaining adequate capital for the normal obligations reasonably foreseeable in light of its contemplated business operations;

(l) not acquiring obligations of Peregrine, PRM, Holdco any of its managers, directors or officers or any of their respective Affiliates except as required under the Transaction Documents;

(m) observing the limited liability company formalities required by its organizational documents and holding itself out to the public as a legal entity separate and distinct from any other Person, including Peregrine, Holdco or any Affiliate of Peregrine or Holdco;

(n) correcting any known misunderstanding regarding its separate identity;

(o) not forming, acquiring or holding any Subsidiaries; and

(p) not identifying itself as a department or division of Peregrine, PRM, Holdco, any of its managers, directors or officers or any of their respective Affiliates.

9.18 Additional Obligations With Respect to Easements, Etc.

(a) In the event that any instrument granting to the Borrower any easement, right-of-way, or other servitude (including any such easement, right-of-way, or servitude for a pipeline, flowline, gathering line, power line, road or other purpose related to the operation or development of the Project) that constitutes property in which a Lien has been granted, (i) contains a description that is sufficient to comply with the Wyoming Easement Statute, the Borrower shall promptly record such description of any such easement, right-of-way, or other servitude (or a memorandum thereof), in the real property records of the county in which such easement, right-of-way, or servitude is located, or (ii) does not contain a description that is sufficient to comply with the Wyoming Easement Statute, the Borrower agrees that it shall either (A) obtain a description that is sufficient to comply with the Wyoming Easement Statute and promptly record such easement, right-of-way, or other servitude (or a memorandum thereof) with the corrected or additional description, in the real property records of the county in which such easement, right-of-way, or servitude is located, (B) obtain a description that is sufficient to comply with the Wyoming Easement Statute and record such description of any such easement, right-of-way, or other servitude (or a memorandum thereof), in the real property records of the county in which such easement, right-of-way, or servitude is located on or before thirty (30) days before the one year anniversary of the grant, or re-grant pursuant to clause (C) below, of such easement, right-of-way or other servitude, or (C) at least thirty (30) days before the one year anniversary of the grant of such easement, right-of-way or other servitude, obtain a re-grant of the applicable easement, right-of-way, or other servitude.

(b) With respect to any such easements, rights-of-way, or other servitudes (i) for which the Borrower obtains a re-grant or a more specific description as required by the Wyoming Easement Statute, (ii) that the Borrower acquires, plats or records, or (iii) with respect to which the Borrower records an instrument setting forth a description as required by the Wyoming Easement Statute, the Borrower shall promptly, and in any event within ten (10) days thereof, (A) notify Administrative Agent thereof and (B) execute, acknowledge, deliver and record or file a supplemental mortgage and such other documents and instruments in order to subject such easements, rights-of-way, and servitudes that have been re-granted, and do such further acts as may be requested by Administrative Agent to carry out more effectively the purposes of the security interest granted hereby.

9.19 Milestones. Borrower shall cause to be satisfied the Milestones set forth on Schedule 9.19 attached hereto.

9.20 Compliance with the DIP Orders. The Borrower shall, at all times, comply in all material respects with all terms, conditions and provisions of the DIP Orders.

9.21 Cash Receipts. During each period commencing on the first date covered by an approved Budget (the "First Budget") and ending on the first date of the next succeeding approved Budget, the

Borrower shall achieve actual cash receipts for such period of at least 25% of the projected cash receipts for such period set forth in the First Budget.

9.22 Cash Disbursements. The Borrower shall ensure that the Debtors' cumulative, aggregate actual cash disbursements over the budget period described in Section 9.01(a) shall (a) other than with respect to professional fees, equal the cash disbursements projected in the Budget subject to an unfavorable variance of not more than 20% per line item and subject to an unfavorable variance of not more than 15% as to the cash disbursements for all line items aggregated in the Budget and (b) with respect to professional fees, other than the professional fees incurred by Lenders during the Budget period described in Section 9.01(a), equal the cash disbursements projected in the Budget subject to an unfavorable variance of not more than 10% as to the cash disbursements for professional fees included in the Budget.

9.23 Credit Bidding. The Borrower agrees that, subject to applicable law, Administrative Agent has the right to credit bid the amount of the Obligations during the sale of any assets of the Borrower, including, without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of a plan of reorganization subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or otherwise.

ARTICLE X NEGATIVE COVENANTS

Until the Termination Date shall have occurred, the Borrower covenants and agrees that:

10.01 Indebtedness. The Borrower will not directly or indirectly, create, incur, assume or permit to exist any Indebtedness, except:

- (a) the Obligations;
- (b) Indebtedness listed on Schedule 10.01; and
- (c) obligations in respect of bid, performance, surety or appeal bonds or similar instruments incurred in the ordinary course of business.

10.02 Liens. The Borrower will not create, incur, assume or permit to exist any Lien on any Property now owned or hereafter acquired by it, except:

- (a) Liens, pledges or deposits under worker's compensation, unemployment insurance or other social security legislation (other than ERISA);
- (b) Liens imposed by any Government Authority for Taxes that are not yet due or that are being Contested;
- (c) Liens securing the Carve-Out;
- (d) Mechanics' Liens, if any, arising in the ordinary course of business or incidental to the development of the Project, in each case, prior to the Petition Date;
- (e) defects, easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business and easements, rights-of-way, encumbrances, licenses, and

other restrictions on the use of Property and defects or imperfections in title that, in each case, do not materially and adversely interfere with the operation of such Property or the Project, taken as a whole;

(f) Liens in existence or anticipated on the Effective Date and described in Section 1 of Schedule 10.02;

(g) Liens described in Section 2 of Schedule 10.02 which relate to outstanding mineral interests and royalties existing on the Effective Date;

(h) Liens in favor of the Secured Parties created pursuant to the DIP Financing Documents;

(i) adequate protection Liens granted pursuant to the DIP Orders;

(j) deposits made in the ordinary course of business to secure statutory obligations (exclusive of obligations for borrowed money), bonds to secure removal of Liens, appeals bonds, and other obligations of like nature arising in the ordinary course of business;

(k) Reserved;

(l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Permitted Investments on deposit in one or more accounts maintained by the Borrower, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements;

(m) Liens created pursuant to construction, operating, reciprocal easements, farmout and maintenance agreements, space lease agreements, division orders, contracts for sale, transportation or exchange of oil and natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements and other similar agreements, in each case (i) entered into in the ordinary course of business, (ii) securing obligations other than Indebtedness, and (iii) created pursuant to the combination of applicable Government Rule and the inherent nature of the applicable arrangement; and

(n) Liens upon assets subject to operating leases permitted hereunder in favor of lessors under such leases securing obligations under such leases.

10.03 Fundamental Changes; Asset Sales.

(a) The Borrower will not liquidate or dissolve or merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets (except as permitted by Section 10.03(c)).

(b) The Borrower will not engage in any business other than the business permitted by Section 8.10.

(c) The Borrower will not sell, lease, assign, transfer or otherwise dispose of (i) Collateral, or (ii) all or any substantial part of its assets, if any, which do not constitute Collateral, in each case, except (A) dispositions provided for and authorized in the DIP Orders, (B) other dispositions to the extent the cash proceeds are sufficient to immediately and indefeasibly pay in full in cash all the Obligations and Pre-Petition Debt and such cash proceeds are immediately so paid to Administrative

Agent for application in full to the Obligations and the Pre-Petition Debt and (C) other dispositions expressly authorized by other provisions of the DIP Financing Documents. Anything contained in this Agreement or any other DIP Financing Document to the contrary notwithstanding, except for dispositions specifically permitted under this Section 10.03, Borrower had no authority, express or implied, to dispose of any item or portion of the Collateral.

(d) The Borrower will not issue (i) any equity interest that is Disqualified Capital Stock or (ii) any equity interest that is not Collateral.

(e) The Borrower will not discount or sell (with or without recourse) any right to receive income or revenues, including its notes receivable or accounts receivable

10.04 Investments, Loans, Advances, Guarantees and Acquisitions.

(a) The Borrower will not purchase, hold or acquire any equity interests, evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in (collectively, "Investments"), any other Person, in each case except:

(i) Investments existing on the Effective Date and set forth on Schedule 9.04;

(ii) the Collateral Securities Accounts and any investment of such amounts in Permitted Investments in accordance with Section 3.04(b) of the Disbursement Agreement;

(iii) Investments that are deposits, pledges or bonds permitted by Section 10.01;

(iv) Investments in securities of trade creditors or customers in the ordinary course of business received upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or in settlement of amounts due (including in settlement of delinquent obligations and other disputes with suppliers and customers);

(v) advances and loans to Holdco for the purposes and in the amounts necessary to pay the fees, and expenses permitted by Section 10.07, subject to the satisfaction of the applicable conditions set forth in the Disbursement Agreement; and

(vi) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business.

(b) the Borrower will not purchase or otherwise acquire (in one transaction or a series of transactions) (i) a division or line of business of, or all or substantially all of the assets of, any other Person, or (ii) a substantial portion of the assets of any other Person.

10.05 Hedging Agreements. The Borrower will not enter into any Hedging Agreement, other than Hedging Agreements entered into in connection with the Pre-Petition Credit Agreement.

10.06 Restricted Payments. The Borrower will not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment.

10.07 Transactions with Affiliates. The Borrower will not sell, lease or otherwise transfer any Property to, or purchase, lease or otherwise acquire any Property from, or otherwise engage in any other transactions with, any of its Affiliates, or any of their respective officers or directors, except for (a) the Material Contracts and the Services Agreement in effect on the Effective Date, and described on Schedule 10.07, (b) agreements on terms no less favorable to the Borrower than if the transaction had been negotiated in good faith on an arm's-length basis with a Person that is not an Affiliate or officer or director thereof, (c) any Restricted Payment permitted by Section 10.06, (d) Investments permitted by Section 10.04(a)(i), and (e) any transactions described on Schedule 10.07, which shall include transactions pursuant to, or in accordance with, the Court order approving Borrower's cash management system.

10.08 Restrictive Agreements. The Borrower will not directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that (a) materially prohibits, restricts or imposes any condition upon the ability of the Borrower to create, incur or permit to exist any Lien upon any of its Property that is required by the DIP Financing Documents, (b) requires or may in the future require the granting of Liens (other than Permitted Liens) that are secured *pari passu* with the Liens granted pursuant to the DIP Financing Documents, including pursuant to a "most favored nations" clause, "ratable security" clause or similar provision relating to Liens; *provided that* (i) the foregoing shall not apply to restrictions and conditions (A) imposed by Government Rule or by the DIP Financing Documents, (B) existing in favor of the holder of any Lien permitted under Section 10.02 relating to the Property subject to such Lien, and (C) contained in any agreements relating to the sale of any Property otherwise permitted hereunder pending the consummation of such sale that are customary in nature, and (ii) clause (a) of the foregoing shall not apply to customary provisions in leases and other agreements restricting the assignment thereof.

10.09 Anti-Terrorism Law; Anti-Money Laundering.

(a) The Borrower will not, directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 8.22(b), (ii) knowingly deal in, or otherwise engage in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to the Administrative Agent any certification or other evidence requested from time to time by the Administrative Agent confirming the Borrower's compliance with this Section 10.09(a)).

(b) The Borrower will not cause or permit any of the funds of the Borrower that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Government Rule.

10.10 Embargoed Person. The Borrower will not cause or permit (a) any of the funds or Properties of the Borrower that are used to repay the Loans to constitute Property of, or be beneficially owned directly or indirectly by, any Person subject to sanctions or trade restrictions under United States law ("Embargoed Person" or "Embargoed Persons") that is identified on (i) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, including the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et

seq., and any Executive Order or Government Rule promulgated thereunder, with the result that the investment in the Borrower (whether directly or indirectly) is prohibited by a Government Rule, or the Loans would be in violation of a Government Rule, or (ii) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrower, with the result that the investment in the Borrower (whether directly or indirectly) is prohibited by a Government Rule or the Loans are in violation of a Government Rule.

10.11 Subsidiaries; After-Acquired Property. Notwithstanding anything to the contrary in any DIP Financing Document other than Section 10.03 and Section 10.04, the Borrower will not (a) form or own any Subsidiaries, (b) become a general or limited partner in any partnership or a joint venture in any joint venture, (c) acquire any ownership or equity interests in or make any capital contribution to any Person, (d) enter into any profit sharing or royalty agreement or other similar arrangement whereby its income or profits are, or might be, shared with any other Person, other than as set forth on Schedule 10.11 or (e) acquire any assets (including any Real Property Interests or improvements thereon or any interest therein) after the Effective Date (other than assets constituting Collateral hereunder that automatically and effectively become subject to the Lien provided for hereunder upon acquisition thereof).

10.12 ERISA.

(a) The Borrower will not sponsor, maintain, administer, contribute to, participate in, or have any obligation to contribute to any Pension Plan or Multiemployer Plan.

(b) Except for matters that could not reasonably be expected to result in a Material Adverse Effect, the Borrower will have no liability (secondary or otherwise) with respect to a Pension Plan or a Multiemployer Plan and no ERISA Affiliate will sponsor, maintain, administer, contribute to, participate in, or have any obligation to contribute to, or any liability (contingent or otherwise) under, any Pension Plan or Multiemployer Plan.

10.13 Sale and Leaseback Transactions. The Borrower will not enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred (a "Sale and Leaseback Transaction").

10.14 Amendments. Without the approval of the Required Lenders, or in the case of any assignment by a counterparty to a Material Contract pursuant to clause (vii) below, the approval of the Administrative Agent, the Borrower will not (i) amend or otherwise modify (or permit to be amended or modified) its organizational documents in a manner that would be adverse to the Secured Parties in any material respect, (ii) make any material changes to the design of the Project, (iii) amend or otherwise modify the Services Agreement in any material respect or in any respect that is adverse to the interests of the Lenders; *provided that* any other amendment or other modification to the Services Agreement shall be subject to the approval of the Administrative Agent only, (iv) amend or otherwise modify a Material Contract in any respect that could reasonably be expected to have a Material Adverse Effect, (v) cancel or terminate, or consent to the cancellation or termination of, any Material Contract (other than expiration in accordance with the terms thereof), or waive, fail to enforce, forgive, compromise, settle, adjust or release any material obligations of counterparties under the Material Contracts, (vi) assign any of its rights under any Material Contract, or consent to the assignment by any counterparty of any material obligations under any Material Contract other than Storage Service Agreements, (viii) enter into any Storage Service Agreement except in accordance with applicable Government Approvals of the Borrower or the then-effective statement of operating conditions of the Borrower filed with FERC, or (ix) consent

to the assignment of a Firm Storage Service Agreement by the counterparty to such Firm Storage Service Agreement.

(b) Without the prior written consent of the Administrative Agent, in consultation with its Advisors, the Borrower will not amend or otherwise modify (or permit to be amended or modified) the Risk Management Policy in any material respect.

10.15 Cash Management. Borrower shall not, without the prior written consent of the Administrative Agent, use a cash management system that is substantially different from the cash management system in effect on the date hereof.

10.16 Capital Expenditures. Borrower shall not make any Capital Expenditures other than in accordance with the Budget.

10.17 Consent to Amendment of DIP Orders. The Borrower shall not seek to amend, supplement or modify any of the terms of the Final Order, unless such amendment, supplement or modification (i) is first submitted to counsel for Administrative Agent, (ii) is in form and substance reasonably acceptable to Administrative Agent and its counsel in their sole option and discretion, and (iii) is not entered into without first obtaining the express written consent of Administrative Agent for such amendment, supplement or modification having been obtained or Lender's express consent in open Court.

10.18 Other Court Filings and Applications. Borrower shall not apply to the Court for authority to take any action that is prohibited by the terms of or is inconsistent with any of its agreements under any of the DIP Financing Documents or refrain from taking any action that is required to be taken by or is inconsistent with any of its agreements under the terms of any of the DIP Financing Documents or permit any indebtedness or claim to be pari passu with or senior to any of the Obligations, except as provided by this Agreement or the DIP Orders.

10.19 Plan of Reorganization. Borrower shall not propose a plan of reorganization in connection with the Chapter 11 Case that does not either (a) provide for payment in full of the Obligations or (b) approve the Exit Financing.

ARTICLE XI EVENTS OF DEFAULT

11.01 Events of Default. The occurrence of any of the following events shall constitute an Event of Default (each, an "Event of Default"):

(a) the Borrower shall fail to pay any principal of any Loans when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loans or any fee (other than an amount referred to in clause (a) of this Section) payable under this Agreement, or any other DIP Financing Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) the Borrower shall fail to pay any other amount (other than an amount referred to in clause (a) or (b) of this Section) payable under this Agreement or any other DIP Financing Document when and as the same shall become due and payable, and such failure shall continue unremedied until the

earlier of (i) five (5) Business Days from the date of receipt by the Borrower from the Administrative Agent of notice that such amount is due, or (ii) for thirty (30) days.

(d) any representation or warranty made or deemed made by the Borrower, Holdco, or Peregrine in any DIP Financing Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document delivered in compliance with the DIP Financing Documents or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Sections 9.01(g), 9.02, 9.03, 9.08, 9.17, 9.18, 9.19, 9.20 or 9.21 or, in Article X;

(f) the Borrower, Holdco or any Debtor shall fail to observe or perform any covenant or agreement made by such Person contained (i) in this Agreement (other than those specified in clause (a), (b), (c) or (e) of this Section), and such failure shall continue unremedied for a period of thirty (30) days (or, in the case of a failure to observe or perform the covenant contained in Section 9.01(k), five (5) days) after the Borrower's Knowledge of such failure or (ii) in any other DIP Financing Document and such failure shall continue unremedied for a period of thirty (30) days (or such shorter cure period set forth therein) after the Borrower or any Debtor, as the case may be, has knowledge or should have had knowledge of such failure;

(g) (i) the Borrower, Holdco or any Debtor shall fail to make any payment (whether of principal or interest or other amount and regardless of amount) in respect of any post-petition Material Indebtedness, when and as the same shall become due and payable and such failure is not cured prior to the expiration of the applicable cure period, or (ii) any event or condition occurs and is continuing that results in any post-petition Material Indebtedness of the Borrower, Holdco or any Debtor becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any such post-petition Material Indebtedness or any trustee or agent on its or their behalf to cause any such post-petition Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof; *provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of any permitted voluntary sale or transfer of the Property securing such Indebtedness so long as such Indebtedness is repaid contemporaneously with such sale or transfer;*

(h) one or more judgments for the payment of money in an aggregate amount in excess of the Judgment Threshold not covered by insurance shall be rendered against the Borrower, any Debtor, or any combination thereof and the same shall remain undischarged at any time while execution shall not have effectively been stayed or such judgment is not subject to an ongoing appeal in a court of competent jurisdiction, or action by a judgment creditor to attach or levy upon any assets of the Borrower or any Debtor shall be legally allowed to proceed to enforce any such judgment;

(i) a Change in Control or Change in Management shall occur;

(j) an Event of Abandonment shall occur;

(k) the Borrower shall be determined to have liability for any Environmental Claim which could reasonably be expected to have a Material Adverse Effect;

(l) the DIP Financing Documents shall, for any reason, except to the extent permitted by the terms hereof, cease to create a valid and perfected first priority Lien, except for Permitted Liens, in any material portion of the Collateral, or the Borrower, Holdco or any Debtor shall assert or admit in writing that any such Lien is invalid or unperfected;

(m) any DIP Financing Document or any material provision thereof shall at any time and for any reason cease to be enforceable and in full force and effect or become null and void, or a proceeding shall be commenced by the Borrower or any Government Authority seeking to establish the invalidity or unenforceability thereof, or the Borrower shall repudiate or deny any portion of its Obligations or the Borrower shall assert or admit in writing that any DIP Financing Document or any material provision thereof is invalid, not in full force and effect or unenforceable;

(n) there shall occur a Condemnation or an Event of Loss with respect to the Project or Project Properties substantially in their entirety, which Condemnation or Event of Loss results in a Material Adverse Effect and, in the case of such an Event of Loss, cannot reasonably be expected to be repaired, replaced or restored within 30 days;

(o) except as a result of the filing of the Chapter 11 Case, any event of default under any Material Contract, or any counterparty thereto shall fail to perform under any such agreement, or any Material Contract shall terminate or be canceled (other than termination in accordance with the terms thereof after full performance), in each case, if such event or occurrence has had or is having a Material Adverse Effect, unless within thirty (30) days of the earliest such event of default, failure to perform, termination or cancellation, the Borrower identifies a replacement and provides the Administrative Agent with a copy of an executed replacement agreement which, in all material respects, cures the impact of the Material Adverse Effect;

(p) except as a result of the filing of the Chapter 11 Case, the termination or revocation of any Government Approval required for the construction or operation of the Project, in each case that could reasonably be expected to have a Material Adverse Effect; *provided that*, unless such termination or revocation actually causes a Material Adverse Effect, no Event of Default shall occur with respect to this clause (p) for a period of ninety (90) days to the extent the Borrower is actively seeking to cure such termination or revocation and obtain the Government Approval required for the construction or operation of the Project; *provided, further*, that such ninety (90) day period may be extended for an additional ninety (90) days upon the certification by the Independent Engineer to the Administrative Agent that the Borrower is reasonably pursuing a cure and seeking to obtain such Government Approval;

(q) the occurrence after the Effective Date of any event, incident, circumstance, or claim which has a Material Adverse Effect;

(r) the Chapter 11 Case shall be converted to a case under Chapter 7 of the Bankruptcy Code or be dismissed or a motion requesting such relief shall have been filed;

(s) the filing or support of a proposed plan of reorganization by Borrower that does not provide for either (i) the indefeasible payment in full and in cash of Borrower's Obligations outstanding hereunder or (ii) the Exit Facility, unless otherwise agreed in writing by Administrative Agent in its sole discretion;

(t) entry of an order confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization that does not require either (i) the indefeasible repayment in full, in cash of the Obligations as of the effective date of such plan or (ii) the conversion of the Obligations to the Exit Facility, unless otherwise agreed in writing by Administrative Agent in its sole discretion;

(u) appointment of a trustee under Section 1104 of the Bankruptcy Code without the express written consent of Administrative Agent, or the filing of any motion or other pleading requesting such relief which the Borrower fails to timely oppose;

(v) appointment of an examiner (other than a fee examiner) with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code without the prior written consent of Administrative Agent, or the filing of a motion or other pleading requesting such relief which the Borrower fails to timely oppose;

(w) entry of an order by the Court amending, supplementing, staying, vacating or otherwise modifying this Agreement, the Interim Order or Final Order approving this Agreement, without the prior written consent of Administrative Agent or the filing of a motion or other pleading requesting such relief which the Borrower fails to timely oppose;

(x) any attempt by Borrower to obtain, or if any other party in interest obtains, a final non-appealable order of the Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce or otherwise impair Administrative Agent's claims, or to subject any of Administrative Agent's collateral to a surcharge pursuant to Section 506(c) of the Bankruptcy Code;

(y) Borrower shall apply for an order substituting any assets for all or any portion of the Collateral;

(z) any payment on, or application for authority to pay, any pre-petition claim owing to terminated employees, or lease rejection damages, without prior written consent of Administrative Agent or as otherwise set forth in the Budget as approved by Administrative Agent in its sole discretion;

(aa) a final non-appealable order is entered granting any creditor with a claim in excess of \$100,000 relief from the Automatic Stay so as to allow such creditor to proceed with foreclosure (or the granting of a deed in lieu of foreclosure or the like) against any assets of the Borrower in excess of \$100,000;

(bb) Borrower's exclusive right to file a plan of reorganization in connection with the Chapter 11 Case shall have been terminated or the Borrower shall have agreed to any such termination;

(cc) any Sale is conducted by Borrower and Borrower shall take (or support any other Person in taking) any action in order to restrict or prohibit Administrative Agent or any Lender from submitting a "credit bid" for any assets of the Debtor;

(dd) after the consummation of any Sale, the Borrower fails to disburse the sale proceeds to the Administrative Agent contemporaneously with the closing thereof;

(ee) the Plan Support Agreement shall have been terminated in accordance with its terms or, once effective, any material provision thereof shall cease to be in full force or effect;

(ff) five (5) Business Days after the Administrative Agent (acting at the direction of the applicable Required Lenders) has delivered written notice to the Borrower of the Borrower failing to comply with the "Requisite Conditions," as such term is defined in the Plan Support Agreement, unless Borrower has cured the same during such period to the satisfaction of the Administrative Agent (which shall not be unreasonably withheld); provided that there shall be no five (5) Business Day cure period for Borrower's failure to comply with the Requisite Condition set forth in Section 2(d) of the Plan Support Agreement; or

(gg) the Borrower shall fail to meet any of the Milestones within the timeframes provided for on Schedule 9.19 (or such later dates as approved by the Required Lenders).

11.02 Acceleration.

Subject to the DIP Orders (including any relevant remedy notice periods and restraint on remedies), if any Event of Default shall occur and be continuing, then the Administrative Agent may, and at the request of the Required Lenders shall, (i) by notice to the Borrower, declare the Commitments to be terminated, whereupon all such Commitments shall immediately terminate and (ii) by notice to the Borrower, declare the Obligations, all accrued and unpaid interest thereon and all other amounts owing to the Secured Parties to be due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or notice of any kind whatsoever.

11.03 Other Remedies.

(a) Subject to the DIP Orders (including any relevant remedy notice periods and restraint on remedies), upon the occurrence and during the continuance of any Event of Default,

(i) the Administrative Agent may at the request of the Required Lenders, proceed to protect and enforce the rights, privileges and remedies granted to any of the Secured Parties by this Agreement and the other DIP Financing Documents by instituting such judicial or other proceedings, filing proofs of claim or other documents establishing their claim in any proceedings with respect to the Borrower, Holdco, or any other obligor under any of the DIP Financing Documents and by taking all such other actions as the requisite Secured Parties may determine, either at law, in equity, in bankruptcy or otherwise, whether for specific enforcement of any covenant or agreement contained in this Agreement or any other DIP Financing Document, or in aid of the exercise of any right, power, privilege or remedy granted herein or therein, or for any foreclosure upon the Collateral and sale thereof under any order, judgment or decree in any judicial proceeding, or to take any action for the enforcement of the security interests and/or Liens created hereunder or under the DIP Orders, or to enforce any other legal or equitable right or remedy granted or otherwise available to any of the Secured Parties acting in accordance with the DIP Financing Documents.

(ii) The remedies hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Government Rule or by any of the DIP Financing Documents. In addition to any other rights, privileges and remedies which the Secured Parties may have, the Administrative Agent acting in accordance with the terms hereof shall have, and may exercise in respect of the Collateral, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, as in effect from time to time in any applicable jurisdiction in which the Collateral is located.

(b) The taking of such actions by any of the Secured Parties shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice or Event of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding such actions, each of the Secured Parties shall be entitled to exercise every right provided for herein or in any other DIP Financing Document or by law or in equity upon and during the occurrence and continuation of an Event of Default, including the right to exercise the power of sale subject to applicable Government Rules. Any of the actions referred to in this Section 11.03(b) may be taken by any of the Secured Parties irrespective of whether any notice of election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness and obligations secured hereby.

(c) Without limiting any other provision of this Agreement, the Borrower agrees that if the Borrower fails to perform any act or to take any action which the Borrower is required to perform or take under any DIP Financing Document or pay any money which the Borrower is required to pay under

any DIP Financing Document to the Administrative Agent, the Administrative Agent may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Administrative Agent and any money so paid by Administrative Agent shall be a demand Obligation owing by the Borrower to the Administrative Agent and Administrative Agent, upon making such payment, shall be subrogated to all of the rights of the Person receiving such payment.

ARTICLE XII THE ADMINISTRATIVE AGENT

12.01 Appointment, Powers and Immunities. Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as its agent under this Agreement and the other DIP Financing Documents with such powers as are specifically delegated to the Administrative Agent by the terms of the DIP Financing Documents, together with such other powers as are reasonably incidental to such powers. The Administrative Agent (which term as used in this sentence and in Section 12.05 and the first sentence of Section 12.06 shall be deemed to include the Administrative Agent's affiliates and its own and its affiliates' officers, directors, employees, representatives and agents): (a) shall have no duties or responsibilities except those expressly set forth in the DIP Financing Documents, and shall not by reason of any DIP Financing Document have a fiduciary relationship or be a trustee for any Lender; (b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in any DIP Financing Document, or in any certificate or other document referred to or provided for in, or received by any of them under, any DIP Financing Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any DIP Financing Document or any other document referred to or provided for in any DIP Financing Document or for any failure by the Borrower or any other Person to perform any of its obligations under any DIP Financing Document; (c) shall not be required to initiate or conduct any litigation or collection proceedings under any DIP Financing Document and (d) shall not be responsible or liable for any action taken or omitted to be taken by it under any DIP Financing Document or under any other document or instrument referred to or provided for in any DIP Financing Document or in connection with any DIP Financing Document, except for its own gross negligence or willful misconduct. The Administrative Agent may employ third-party agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such third-party agents or attorneys-in-fact selected by it in good faith. The Administrative Agent may deem and treat the payee of any Note as the holder of such Note for all purposes of the DIP Financing Documents unless and until an Assignment and Assumption shall have become effective with respect to such Note pursuant to Section 13.06(b). The Administrative Agent shall have the right to delegate its duties to one or more sub-agents; *provided that* the Borrower shall be entitled to communicate directly with the Administrative Agent regarding the performance of such obligations.

12.02 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon any certification, notice or other communication, instrument or writing (including any made by telephone, facsimile or electronic mail) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by any DIP Financing Document, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, or failing to act, under any DIP Financing Document in accordance with instructions given by the Required Lenders, as applicable, or, if provided in this Agreement, in accordance with the instructions given by all of the Lenders or all of the affected Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all of the Lenders.

12.03 Defaults. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default (other than the nonpayment of principal of or interest on

Loans or of fees payable hereunder (other than such fees payable directly to a third party pursuant to the terms hereof) that are not received by the Administrative Agent) unless the Administrative Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is a “Notice of Default”. In the event that the Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall give prompt notice of such receipt to the Lenders (and shall give each Lender prompt notice of each such nonpayment). The Administrative Agent shall (subject to Section 12.07) take such action with respect to such Default or Event of Default as shall be directed in writing by the Required Lenders or all of the Lenders or affected Lenders, as applicable; *provided that* unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Required Lenders, all of the Lenders or all of the affected Lenders, as applicable.

12.04 Rights as a Lender. With respect to its Commitments and the Loans made by it, if any, ING Capital LLC (and any successor acting as Administrative Agent) in its capacity as a Lender under the DIP Financing Documents shall have the same rights, privileges and powers under the DIP Financing Documents as any other Lender and may exercise the same as though it were not acting as the Administrative Agent, and the term “Lender” or “Lenders” shall, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. ING Capital LLC (and any successor acting as Administrative Agent) and its affiliates may (without having to account for the same to any Lender) accept deposits from, lend money to, make investments in and generally engage in any kind of banking, trust or other business with the Borrower (and any of its Subsidiaries, Affiliates, officers or directors) as if it were not acting as the Administrative Agent, and ING Capital LLC and its affiliates may accept fees and other consideration from the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

12.05 Lenders’ Indemnification of the Administrative Agent. The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed under Section 13.03, but without limiting the obligations of the Borrower under Section 13.03) ratably in accordance with the aggregate principal amount of the Loans held by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with ~~their respective Commitments~~ each Lender’s Pro Rata Percentage), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever (including counsel fees and expenses) which may be imposed on, incurred by or asserted against such Person (including by any Lender) arising out of or by reason of any investigation or in any way relating to or arising out of this Agreement or any other Transaction Document or any other documents contemplated by or referred to in this Agreement or in the other Transaction Documents or in the transactions contemplated by this Agreement (including the costs and expenses which the Borrower is obligated to pay under Section 13.03) or the enforcement of any of the terms of this Agreement or of the other Transaction Documents or of any such other documents or any action taken or not taken by such Person under or in connection with any of the foregoing; *provided that* no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Person to be indemnified. The agreements in this Section 12.05 shall survive the payment of the Loans and the other Obligations payable hereunder.

12.06 Non-Reliance on Administrative Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on the Administrative Agent or any Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and that it will, independently and without reliance upon the Administrative Agent or any Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Transaction Document. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any other Person of this Agreement or any other document referred to or provided for in this Agreement or to inspect the Properties or books of the Borrower or such other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement and the other DIP Financing Documents, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of the Administrative Agent or any of its affiliates.

12.07 Failure to Act. Except for actions expressly required of the Administrative Agent under this Agreement and under the other Transaction Documents to which the Administrative Agent is intended to be a party, the Administrative Agent shall in all cases be fully justified in failing or refusing to act under this Agreement and under the other Transaction Documents unless it shall receive further assurances to its reasonable satisfaction from the Lenders of their indemnification obligations under Section 12.05 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

12.08 Resignation of Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no successor shall have been so appointed by the Required Lenders, in consultation with the Borrower, and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and in consultation with the Borrower (except that after the occurrence and during the continuance of a Default or an Event of Default, no such consultation shall be required), appoint a successor Administrative Agent meeting the qualifications set forth above. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to indemnity payments owed to the resigning Administrative Agent), and the resigning Administrative Agent shall be discharged from its duties and obligations hereunder or under the other DIP Financing Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article XI shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and Affiliates, and their respective directors, officers, employees, agents and advisors, in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

12.09 Consents under Transaction Documents. Except as otherwise provided in Section 13.04 with respect to any waiver, amendment, modification, or supplement under this Agreement, the Administrative Agent shall, upon the prior consent of the Required Lenders (except to the extent otherwise provided in this Agreement), consent to (and shall direct the Administrative Agent, if applicable, to enter into) any modification, supplement or waiver under any other such Transaction

Document to which the Administrative Agent is intended to be a party; *provided that* without the prior consent of each Lender, the Administrative Agent shall not (and, if applicable, shall not direct the Administrative Agent to) (except as contemplated in this Agreement) release any Collateral or otherwise terminate any Lien under hereunder, or agree to additional obligations being secured by the Collateral (unless the Lien for such additional obligations shall be junior to the Lien in favor of the other obligations secured hereby and is otherwise permitted under this Agreement), except that no such consent shall be required, and the Administrative Agent is hereby authorized, to release (and to direct the Administrative Agent to release) any Lien covering Property of the Borrower or any other Person which is the subject of a disposition of Property of the Borrower or such other Person which is permitted or contemplated under this Agreement or to which the Lenders have otherwise consented.

ARTICLE XIII MISCELLANEOUS

13.01 Waiver. No failure on the part of the Administrative Agent or any Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement, any Note or any other DIP Financing Document shall operate as a waiver of such right, remedy, power or privilege, and no single or partial exercise of any right, power or privilege under this Agreement, any Note or any other DIP Financing Document shall preclude any other or further exercise of such right, remedy, power or privilege, or the exercise of any other right, power or privilege. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. All covenants of the Borrower and Holdco set forth in this Agreement and the other DIP Financing Documents and all Events of Default set forth in Section 11.01 shall be given independent effect so that, in the event that a particular action or condition is not permitted by the terms of any such covenant or would result in a Default or Event of Default, the fact that such event or condition could be permitted by an exception to, or be otherwise within the limitations of, another covenant or another Default or Event of Default shall not avoid the occurrence of a Default or an Event of Default in the event that such action is taken or condition exists.

13.02 Notices. All notices, requests and other communications provided for in this Agreement and under the DIP Financing Documents (including any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including by facsimile or electronic mail) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages of this Agreement or in the relevant section as specified in other DIP Financing Documents, or as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by facsimile or personally delivered or, in the case of a mailed notice or notice sent by courier, upon receipt, in each case given or addressed as set forth above. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided that* the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided that* approval of such procedures may be limited to particular notices or communications.

13.03 Expenses; Indemnity; Etc.

(a) The Borrower agrees to pay or reimburse each of the Lenders, the Administrative Agent, for: (i) all reasonable out-of-pocket costs and expenses of the Administrative Agent (including the

reasonable fees and expenses of counsel to the Administrative Agent, and any of the experts (including the Independent Engineer and the Insurance Consultant) engaged by the Administrative Agent or the Lenders from time to time) and the Administrative Agent (including the reasonable fees and expenses of counsel to the Administrative Agent, and any third-party advisors engaged by the Administrative Agent), in connection with (A) the negotiation, preparation, execution and delivery of this Agreement and the other Transaction Documents and the extension of credit under this Agreement, (B) any amendment, modification or waiver of any of the terms of this Agreement or any other Transaction Document and (C) the syndication of Commitments or Loans, and (ii) all costs and expenses of the Lenders, the Administrative Agent (including reasonable fees and expenses of counsel and reasonable experts' fees and expenses) in connection with (A) the negotiation, preparation, execution and delivery of this Agreement and the other Transaction Documents and the extension of credit under this Agreement, (B) any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower, Peregrine or any other Person under this Agreement, any other Transaction Documents and (C) the enforcement of this Section 13.03, and (D) all transfer, stamp, documentary or other similar Taxes, assessments or charges levied by any Government Authority in respect of this Agreement or any other document referred to in this Agreement and all costs, expenses, Taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any Lien contemplated by this Agreement to which the Administrative Agent is intended to be a party or any other document referred to in this Agreement. The Borrower shall additionally pay for any ongoing cash management or treasury costs of the Administrative Agent, which it is acknowledged are not part of any other fee payable hereunder.

(b) The Borrower hereby agrees to indemnify the Administrative Agent and each Lender and their respective officers, directors, employees, representatives, attorneys and agents (each an "Indemnitee"; and on an individual basis, the Administrative Agent or any Lender, together with its affiliates, officers, directors, employees, representatives and agents, being such Person's "Indemnified Group") from, and shall hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including the reasonable fees and expenses of counsel for each Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party to any such proceeding) that may at any time (including at any time following the Termination Date) be imposed on, asserted against or incurred by an Indemnitee as a result of, or arising out of, or in any way related to or by reason of any claim with respect to (i) any of the transactions contemplated by this Agreement or the execution, delivery or performance of this Agreement, (ii) the extensions of credit under this Agreement or the actual or proposed use by the Borrower of any of the extensions of credit under this Agreement or the grant to the Administrative Agent for the benefit of, or to any of, the Secured Parties of any Lien on the Collateral or in any other Property of the Borrower or any other Person or any membership, partnership or equity interest in the Borrower or any other Person and (iii) the exercise by the Administrative Agent (or the other Secured Parties) of its or their discretion, rights and remedies (including foreclosure) and/or failure to so exercise under this Agreement (but excluding, (A) as to any Indemnitee, any Excluded Taxes, and (B) with respect to the Administrative Agent's and each Lender's, as applicable, Indemnified Group, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to the extent incurred by reason of the gross negligence or willful misconduct of any Person in such Indemnified Group as finally determined by a court of competent jurisdiction). Without limiting the generality of the foregoing, the Borrower hereby agrees to indemnify each Indemnitee from, and shall hold each Indemnitee harmless against, any losses, liabilities, claims, damages, reasonable expenses, obligations, penalties, actions, judgments, suits, costs or disbursements described in the preceding sentence (including any Lien filed against the Project by any Government Authority) (collectively, "Losses") arising under any Environmental Law as a result of the past, present or future operations of the Borrower at, or the past,

present or future condition of, the Project or the other Properties of the Borrower, or any Release or threatened Release of any Hazardous Materials with respect to the Project or the other Properties of the Borrower (including any such Release or threatened Release which shall occur during any period when such Indemnitee shall be in possession of any such site or facility following the exercise by the Administrative Agent or any other Secured Party of any of its rights and remedies under this Agreement or under any DIP Financing Document or any other Transaction Document where such Release commenced or occurred prior to such period, when the Borrower was in possession of such site or facility), even in circumstances where an Indemnitee may be subject to strict liability without regard to fault pursuant to the provisions of Environmental Laws, but excluding, with respect to the Administrative Agent's and each Lender's, as applicable, Indemnified Group, any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to the extent the same have resulted by reason of the gross negligence or willful misconduct of any Person in such Indemnified Group as finally determined by a court of competent jurisdiction.

13.04 Amendments, Modifications, Waivers; Etc.

(a) Except as otherwise provided in this Agreement, neither this Agreement nor any other DIP Financing Document nor any provision hereof or thereof may be waived, amended, modified, or supplemented except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other DIP Financing Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Borrower, in each case with the consent of the Required Lenders; *provided that*:

(i) no such agreement shall:

(A) increase the Commitments of any Lender without the written consent of such Lender,

(B) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender under such Loan,

(C) change Section 4.02 or 4.07(b) in a manner that would alter the *pro rata* sharing of payments required thereby, without the consent of each Lender affected thereby,

(D) change any of the provisions of this Section or the percentage set forth in the definition of the terms "Required Lenders" or any other provision of any DIP Financing Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender,

(E) release all or substantially all of the Collateral from the Liens hereunder, without the written consent of each Lender;

(F) postpone the maturity of any Loan, or any scheduled date of payment of the principal amount of any Loan, or any date for the payment of any interest on any Loan, without the written consent of each Lender; or

(G) postpone the fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby;

(ii) any amendment, modification, waiver or supplement of Article XII, or any other provision of the DIP Financing Documents that affects the rights or obligations of the Administrative Agent, shall require the consent of the Administrative Agent;

(iii) any amendment, modification, waiver or supplement of Article XIII, or any other provision of the DIP Financing Documents that affects the rights or obligations of the Administrative Agent, shall require the consent of the Administrative Agent; an

(iv) any amendment of the definition of the term “Secured Party,” or the release of all or substantially all of the Collateral from the Liens hereunder.

(b) If the Administrative Agent is a party to any DIP Financing Document being amended, supplemented, modified or waived and the consent of such Person is not required in connection therewith, then the Administrative Agent shall instruct such Person to execute such amendment, modification, supplement or waiver, or if such execution is not completed promptly, each such Person hereby appoints and authorizes the Administrative Agent to execute same on its behalf.

(c) If, in connection with any proposed waiver, amendment, modification, supplement, discharge or termination of the provisions of this Agreement as contemplated by Section 13.04(a), the consent of any Lender or Required Lenders, is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right to replace such non-consenting Lender or Lenders, so long as all non-consenting Lenders are so replaced with one or more Persons pursuant to Section 5.05 so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

13.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

13.06 Assignments and Participations.

(a) The Borrower may not assign its rights or obligations under this Agreement or under the Notes or under any other DIP Financing Document without the prior consent of all of the Lenders and the Administrative Agent.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or any portion of its Commitment or the Loans at the time owing to it), with the prior written consent of: the Administrative Agent, in consultation with the Borrower, provided that Administrative Agent need not consult with the Borrower with respect to any assignment at any time after a Default or an Event of Default has occurred and is continuing and *provided, further*, that no consent of the Administrative Agent shall be required for an assignment of any Loan to a Lender or an Affiliate of a Lender; and

(ii) Assignments shall be subject to the following conditions:

(A) any Lender desiring to make an assignment shall assign a proportionate share of its Loans and, except in the case of an assignment to a Lender, an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Commitment and Loans, subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000, unless each of the Borrower

and the Administrative Agent otherwise consent, *provided* that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in a form supplied by the Administrative Agent ("Administrative Questionnaire").

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 5.02, 5.03, 5.04 and 14.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.06 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its

Commitments and the Loans owing to it), *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement, *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any waiver, amendment, modification, or supplement described in Section 13.04(a)(i) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.02, 5.03 and 5.04 (subject to the requirements and limitations therein, including requirements under Section 5.04(g), it being understood that the documentation required in Section 5.04(g) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4.07(a) as though it were a Lender; *provided* such Participant agrees to be subject to Section 4.07(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the DIP Financing Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any DIP Financing Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) A Participant shall not be entitled to receive any greater payment under Section 5.02 or Section 5.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(d) Anything in this Section 13.06 to the contrary notwithstanding, any Lender may assign or pledge all or any portion of its rights under this Agreement to secure any obligations of such Lender, including any such pledge or assignment to any federal reserve lender or any assignment to a special purpose trust or other entity for purposes of securitization of such Lender's loans. No such assignment shall release the assigning Lender from its obligations hereunder.

(e) A Lender may furnish any information concerning Holdco and the Borrower in the possession of such Lender from time to time to assignees and Participants (including prospective assignees and participants), subject, however, to the provisions of Section 13.09.

(f) In connection with any assignment or sale of a participation pursuant to this Section 13.06, such assignee or Participant shall comply with Section 5.04(g).

(g) Anything in this Section 13.06 to the contrary notwithstanding, no Lender may assign or participate any interest in any Commitment or Loan held by it to the Borrower or any of its Affiliates without the prior consent of each Lender.

13.07 Process Agent. The Borrower hereby agrees that service of all writs, process and summonses in any such suit, action or proceeding brought in the State of New York against it or Holdco may be made upon CT Corporation (the "Process Agent"), and the Borrower hereby confirms and agrees that the Process Agent has been duly and irrevocably appointed as its agent, and as the agent of Holdco, to accept such service of any and all such writs, process and summonses, and agrees that the failure of the Process Agent to give any notice of any such service of process to the Borrower shall not impair or affect the validity of such service or of any judgment based thereon. The Borrower hereby further irrevocably consents, on its own behalf and on behalf of Holdco, to the service of process in any suit, action or proceeding in such courts against it or Holdco by the mailing thereof by the Administrative Agent or Administrative Agent by registered or certified mail, postage prepaid, at its address set forth beneath its signature hereto.

13.08 Marshalling. None of the Administrative Agent or any Secured Party shall be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations.

13.09 Confidentiality. Each of the Lenders, the Administrative Agent agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to keep confidential, in accordance with their customary procedures for handling confidential information of this nature and in accordance with safe and sound banking practices, any non-public information supplied to it by the Borrower, PRM, Peregrine, Investor or Holdco pursuant to this Agreement or any other DIP Financing Document that is identified by the Borrower, PRM, Peregrine, Investor or Holdco, as applicable, as being confidential at the time the same is delivered to such Lender, the Administrative Agent; *provided that* nothing in this Agreement shall limit the disclosure of any such information (a) to the extent required by any Government Rule or judicial process, (b) to counsel for any of the Lenders, the Administrative Agent, so long as counsel to such parties agrees to maintain the confidentiality of the information as provided in this Section 13.09, (c) to bank examiners, auditors or accountants, (d) to the Administrative Agent, any other Lender (or any subsidiary or affiliate of any Lender) or any other Secured Party, (e) after notice to the Borrower or Holdco, as applicable, (to the extent such prior notice is legally permitted) in connection with any litigation to which any one or more of the Lenders, the Administrative Agent or any other Secured Party is a party and pursuant to which such Lender, the Administrative Agent or any Secured Party has been compelled or required to disclose such information in the reasonable opinion of counsel to such Lender, the Administrative Agent, or such Secured Party, (f) to the Independent Engineer or the Insurance Consultant, or to other experts engaged by the Administrative Agent or any Lender in connection with the Agreement and the transactions contemplated by this Agreement and the other DIP Financing Documents, so long as such parties agree to maintain the confidentiality of the information as provided in this Section 13.09, (g) to the extent that such information is required to be disclosed to a Government Authority in connection with a Tax audit or dispute, (h) in connection with any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower or Holdco under this Agreement, any other Transaction Document or any Transaction Document or (i) to any assignee or Participant (or prospective assignee or participant) so long as such assignee or Participant (or prospective assignee or participant) first executes and delivers to the respective Lender a confidentiality agreement substantially agreeing to the provisions of this Section 13.09. In no event shall any Lender or the Administrative Agent be obligated or required to return any materials furnished by the Borrower, PRM, Peregrine, Investor or Holdco; *provided that* any

confidential information retained by such Lender or the Administrative Agent shall continue to be subject to the provisions of this Section 13.09.

13.10 Limitation of Liability.

(a) Recourse Liability. The Borrower is personally liable for all of the Obligations.

(b) Limited Recourse. The Administrative Agent and the other Secured Parties shall look solely to the Borrower, the Collateral, and the other collateral pledged to secure any of the Obligations under other DIP Financing Documents. Subject to Section 13.10(c) and (d), no Affiliate of the Borrower, nor any of any such Person's stockholders, limited partners, members, officers, directors, employees, or agents (collectively, "Nonrecourse Persons") shall have any liability to the Administrative Agent or the Secured Parties hereunder.

(c) Exceptions and Limitations. The foregoing provisions of this Section 13.10 shall not:

(i) constitute a waiver, release or discharge of any of the Obligations under, or any terms, covenants, conditions or provisions of, this Agreement, the Notes or any other DIP Financing Document, and the same shall continue until fully paid, discharged, observed or performed;

(ii) limit or restrict the right of any Secured Party to name any Nonrecourse Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other DIP Financing Document, or for injunctive relief or specific performance; or

(iii) reduce, restrict or otherwise affect in any way any right, power, privilege or remedy of the Secured Parties (or any assignee or beneficiary thereof or successor thereto) with respect to, and each and every Person (including each and every Nonrecourse Person) shall remain fully liable to the extent that such Person would otherwise be liable for its own actions with respect to, any fraud or intentional misrepresentation (each, a "Recourse Claim").

(d) Liability under Transaction Documents. Nothing contained in this Section 13.10 shall limit the liability of (i) any Person who is a party to any Transaction Document other than this Agreement under such other Transaction Document, or (ii) any Person rendering a legal opinion pursuant to Section 6.01 or otherwise, in each case under this clause (d) relating solely to such liability of such Person as may arise under such referenced agreement or opinion.

(e) Survival. The limitations on personal liability set forth in this Section 13.10 shall survive the termination of this Agreement and the full payment and performance of the Obligations.

13.11 Survival. The obligations of the Borrower under Sections 5.02, 5.03, 5.04, 14.03, 14.18, 14.19, and 14.20, and the obligations of the Lenders under Sections 12.05 and 14.05 shall survive after the Termination Date. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, in this Agreement or pursuant to this Agreement shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any extension of credit under this Agreement, any Default or Event of Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender or the Administrative Agent may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

13.12 Captions. The table of contents and captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.13 Counterparts; Integration; Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any party to this Agreement may execute this Agreement by signing any such counterpart; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same counterpart. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes. This Agreement and the other DIP Financing Documents constitute the entire agreement and understanding among the parties to this Agreement with respect to the matters covered by this Agreement and the other DIP Financing Documents and supersede any and all prior agreements and understandings, written or oral, with respect to such matters. This Agreement shall become effective at such time as the Administrative Agent shall have received counterparts of this Agreement signed by all of the intended parties to this Agreement.

13.14 Reinstatement. The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including the reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

13.15 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions of this Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

13.16 Remedies. The Borrower agrees that, as between the Borrower and the Lenders, the obligations of the Borrower under this Agreement may be declared to be forthwith due and payable as provided in Article X (and shall be deemed to have become automatically due and payable in the circumstances provided in Article X), and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations shall forthwith become due and payable by the Borrower.

13.17 NO THIRD PARTY BENEFICIARIES. THE AGREEMENT OF THE LENDERS TO MAKE THE LOANS TO THE BORROWER, ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, IS SOLELY FOR THE BENEFIT OF THE BORROWER, THE ADMINISTRATIVE AGENT, THE LENDERS, AND NO OTHER PERSON (INCLUDING ANY OTHER COUNTERPARTY, CONTRACTOR, SUBCONTRACTOR, SUPPLIER, WORKMAN, CARRIER, WAREHOUSEMAN OR MATERIALMAN FURNISHING LABOR, SUPPLIES, GOODS OR SERVICES TO OR FOR THE BENEFIT OF THE PROJECT) SHALL HAVE ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY OTHER TRANSACTION DOCUMENT AS AGAINST THE ADMINISTRATIVE AGENT, OR ANY LENDER OR WITH RESPECT TO ANY EXTENSION OF CREDIT CONTEMPLATED BY THIS AGREEMENT.

13.18 SPECIAL EXCULPATION. TO THE EXTENT PERMITTED BY APPLICABLE GOVERNMENT RULE, NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATING TO, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS (OTHER THAN THE RIGHTS OF THE LENDERS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER DIP FINANCING DOCUMENTS), AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR. NOTWITHSTANDING THE LIMITATIONS OF LIABILITY DESCRIBED IN THE PRECEDING SENTENCE, A PARTY HERETO MAY MAKE A CLAIM AGAINST ANOTHER PARTY, BUT NOT AGAINST ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, BUT ONLY TO THE EXTENT IMPOSED ON OR PAID BY THE PARTY MAKING SUCH CLAIM AND ONLY TO THE EXTENT SUCH CLAIM IS PAYABLE PURSUANT TO AN INDEMNITY HEREUNDER.

13.19 GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE. THE BORROWER, THE ADMINISTRATIVE AGENT, AND THE LENDERS HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT AND STATE COURT SITTING IN NEW YORK CITY FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE OTHER DIP FINANCING DOCUMENTS. THE BORROWER, THE ADMINISTRATIVE AGENT, AND THE LENDERS IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

13.20 WAIVER OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE OTHER DIP FINANCING DOCUMENTS.

13.21 Communications Platform.

(a) Each of the parties hereto agrees that the Administrative Agent may distribute routine communications (“Communications”) to the Lenders, including financial statements and other information, and DIP Financing Documents for execution by the parties thereto by posting such Communications on Intralinks or a substantially similar electronic transmission system selected by the Administrative Agent (the “Platform”).

(b) **ANY PLATFORM, IF PROVIDED, IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE ADMINISTRATIVE AGENT DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY COMMUNICATION OR THE ADEQUACY OF THE PLATFORM, AND THE ADMINISTRATIVE AGENT EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN ANY COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT IN CONNECTION WITH ANY COMMUNICATION OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT HAVE ANY LIABILITY TO THE PARTIES HERETO, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF SUCH PARTY’S, OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT SUCH DAMAGES ARE FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITING THE FOREGOING, NEITHER THE ADMINISTRATIVE AGENT NOR THE PARTIES HERETO SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THE PLATFORM OR, THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET.**

(c) Each Lender agrees that notice to it (as provided in the next sentence) specifying that a Communication has been posted to the Platform shall constitute effective delivery of such Communication to such Lenders for purposes of the DIP Financing Documents. Each Lender agrees (i) to notify the Administrative Agent from time to time of the e-mail address to which the foregoing notice may be sent and (ii) that such notice may be sent to such e-mail address.

13.22 Other Agreements.

(a) Each Lender hereby agrees to be bound by the applicable provisions set forth in the DIP Financing Documents, and irrevocably authorizes the Administrative Agent, Administrative Agent, Independent Engineer, and Insurance Consultant, to act in all applicable capacities and to take all applicable actions set forth in the DIP Financing Documents (subject in each case to the required instructions of other Persons, as applicable).

(b) Each Lender hereby acknowledges that it has received a copy of each DIP Financing Document.

13.23 Patriot Act Compliance. The Lenders hereby notify the Borrower and Holdco that, pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the “Act”), each Lender may be required to obtain, verify and record information that

identifies the Borrower, Holdco and their respective Subsidiaries, which information includes the name and address of each such party and other information that will allow each Lender to identify such parties in accordance with the Act. This notice is given in accordance with the requirements of the Act and is effective for each Lender.

13.24 DIP Orders Control. This Agreement and the other DIP Financing Documents are each subject to the terms and provisions contained in the DIP Orders to the same extent and effect as if the DIP Orders were fully set forth herein and therein; and if any term or provision of this Agreement or any other DIP Financing Document conflicts or is inconsistent with any term or provision of any DIP Orders, the term or provision of the applicable DIP Orders shall control and be given effect.

13.25 Submission of DIP Orders. The Interim Order, if entered, the Final Order and all other orders of the Court authorizing or affecting any aspect of the Loans and all related motions and pleadings seeking to modify, amend or otherwise affect the Interim Order or the Final Order filed on behalf of the Debtors, shall (a) first be submitted to Administrative Agent and its counsel, (b) be in form and substance reasonably acceptable to Administrative Agent and its counsel, at its option, and (c) not be modified without the prior, express written consent of Administrative Agent or its express consent given in open court.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the date first set forth above.

BORROWER:

RYCKMAN CREEK RESOURCES, LLC

By: _____

Chief Financial Officer

Address for Notices:

Three Riverway, Suite 1100
Houston, Texas 77056
Attention: Robert Foss
Telephone: (713) 974-5600
Fax: (713) 974-5601
E-mail:

**ADMINISTRATIVE AGENT AND
ADMINISTRATIVE AGENT:**

ING CAPITAL LLC,
as Administrative Agent and as Administrative Agent

By: _____
Cheryl LaBelle
Managing Director

By: _____
Name:
Title:

Address for Notices:

1325 Avenue of the Americas, 6th Floor
New York, New York 10019
Attention: Patrick Kennedy
Fax: (646) 424-8223
Email: DLNYCLoanAgencyTeam@americas.ing.com

With a copy to:

1325 Avenue of the Americas, 11th Floor
New York, New York 10019
Attention: Cheryl LaBelle
Telephone: (646) 424-7207
Fax: (646) 424-7484
E-mail: Cheryl.LaBelle@americas.ing.com

With a copy to:

1325 Avenue of the Americas, 11th Floor
New York, New York 10019
Attention: Hans Beekmans
Fax: (646) 424-7484
Email: Hans.Beekmans@americas.ing.com

With a copy to:

Holland & Knight LLP
200 Crescent Court
Suite 1600
Dallas, Texas 75201
Attention: Robert W. Jones
Telephone: (214) 964-9483
Fax: (214) 964-9501
Email: Robert.Jones@hklaw.com

LENDERS:

ING CAPITAL LLC,
as Lender

By: _____
Cheryl LaBelle
Managing Director

By: _____
Name:
Title:

Address for Notices:

1325 Avenue of the Americas, 6th Floor
New York, New York 10019
Attention: Patrick Kennedy
Fax: (646) 424-8223
Email: DLNYCLoanAgencyTeam@americas.ing.com

With a copy to:

1325 Avenue of the Americas, 11th Floor
New York, New York 10019
Attention: Cheryl LaBelle
Telephone: (646) 424-7207
Fax: (646) 424-7484
E-mail: Cheryl.LaBelle@americas.ing.com

With a copy to:

1325 Avenue of the Americas, 11th Floor
New York, New York 10019
Attention: Hans Beekmans
Fax: (646) 424-7484
Email: Hans.Beekmans@americas.ing.com

With a copy to:

Holland & Knight LLP
200 Crescent Court
Suite 1600
Dallas, Texas 75201
Attention: Robert W. Jones
Telephone: (214) 964-9483
Fax: (214) 964-9501

Email: Robert.Jones@hklaw.com

RB INTERNATIONAL FINANCE (USA) LLC,
as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Address for Notices:

7 Kenosia Avenue
Danbury, CT 06810
Attention: Steven Van Steenberg
Telephone: (203) 207-7745
Fax: (203) 744-6474
E-mail:
svansteenbergen@usafinance.rbinternational.com

SKANDINAVISKA ENSKILDA BANKEN AB,
as a Lender

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address for Notices:

Skandinaviska Enskilda Banken AB
106 40 Stockholm, Sweden
Kungsträdgårdsgatan 8
Attention: Per Syrjämäki
Telephone: +46-8-763-95-47
Fax: +46-8-763-89-19
E-mail: per.syrjamaki@seb.se

With a copy to:

Kungsträdgårdsgatan 8
SE-106 40 Stockholm, Sweden
Attention: Emil Foghammar
Telephone: +46 8 763 93 93
Fax: +46 8 763 89 19
E-mail: emil.foghammar@seb.se

With a copy to:

Rissneleden 110
SE-106 40 Stockholm, Sweden
Attention: Julia Lin
Telephone: +46 8 763 86 49
Fax: +46 8 611 03 84
E-mail: sco@seb.se

APPENDIX A(1)

Blocked Commitments

<u>Lender</u>	<u>Blocked Commitment</u>	<u>Pro Rata Percentage</u>
ING Capital LLC	\$4,000,000	50%
Skandinaviska Enskilda Banken AB	\$4,000,000	50%
Total	\$8,000,000.00	100.0000%

APPENDIX A(2)

Closing Date Commitments

<u>Lender</u>	<u>Closing Date Commitment</u>	<u>Pro Rata Percentage</u>
ING Capital LLC	\$17,500,000.00	50.0000%
Skandinaviska Enskilda Banken AB	\$14,218,750.00	40.6250%
RB International Finance (USA) LLC	\$3,281,250.00	9.3750%
Total	\$35,000,000.00	100.0000%

APPENDIX A(3)¹**Supplemental Commitments**

<u>Lender</u>	<u>Supplemental Commitment</u>	<u>Pro Rata Percentage</u>
<u>ING Capital LLC</u>	<u>\$5,000,000</u>	<u>50.0000%</u>
<u>Skandinaviska Enskilda Banken AB</u>	<u>\$5,000,000</u>	<u>50.0000%</u>
<u>Total</u>	<u>\$10,000,000</u>	<u>100.0000%</u>

¹ NTD: Lenders and Commitments to be confirmed.

APPENDIX B

Administrative Agent's Wiring Information

JPMorgan Chase Bank, N.A., New York
ABA: 021000021
Acct: ING Capital LLC Loan Agency New York
Acct #: 066 297 311
Ref: Ryckman Creek
Attn: Patrick Kennedy

Document comparison by Workshare Compare on Wednesday, March 15, 2017
3:47:33 PM

Input:	
Document 1 ID	interwovenSite://HKDMS/Active/49914800/1
Description	#49914800v1 <Active> - Exhibit A to Fifth Amendment to Ryckman DIP Credit Agreement (010)
Document 2 ID	C:\NRPortb\Active\JWRILEY\49914800_4.docx
Description	C:\NRPortb\Active\JWRILEY\49914800_4.docx
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	38
Deletions	11
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	49

EXHIBIT B

Schedule 9.19 – Milestones

- a. On or before April 21, 2017, the Debtors shall provide the Lenders holding Supplemental Commitments with letters of intent from interested parties with respect to exit financing proposals and/or sale of or other investment in the Debtors' assets.
- b. On or before April 25, 2017 the Bankruptcy Court shall have entered a final supplemental DIP Order with respect to the Supplemental Commitments.
- c. On or before May 5, 2017, the Debtors shall file a modified plan of reorganization (the "Modified Plan") and related disclosure statement (the "Modified Disclosure Statement") that either (i) incorporates the terms of a third party exit financing facility and/or (ii) establishes bidding procedures for the sale of the Debtors' assets, in each case in form and substance satisfactory to the Lenders holding Supplemental Commitments.
- d. On or before June 16, 2017, the Bankruptcy Court shall have entered an order approving the Modified Disclosure Statement.
- e. On or before July 31, 2017, the Bankruptcy Court shall have entered an order approving the Modified Plan.
- f. On or before August 15, 2017, the Modified Plan shall become effective.

EXHIBIT B

Albergotti Declaration

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

	X	
	:	
In re:	:	Chapter 11
	:	
RYCKMAN CREEK RESOURCES, LLC,	:	Case No. 16-10292 (KJC)
et al.,	:	
	:	Jointly Administered
Debtors. ¹	:	
	:	
	X	

**DECLARATION OF ROBERT D. ALBERGOTTI IN SUPPORT OF DEBTORS’
MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS
TO AMEND THE DIP FACILITY TO OBTAIN ADDITIONAL FINANCING AND
GRANTING RELATED RELIEF**

I, Robert D. Albergotti, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Vice President of Restructuring of Ryckman Creek Resources, LLC (“Ryckman”) and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”). I submit this declaration (this “Declaration”) in support of the *Debtors’ Motion for Interim and Final Orders Authorizing the Debtors to Amend the DIP Facility to Obtain Additional Financing and Granting Related Relief* (the “Motion”),² filed concurrently herewith, pursuant to which the Debtors seek, among other things, authority to enter into an amendment (the “Amendment”) to the DIP Credit Agreement to obtain additional financing.

¹ The Debtors and, where applicable, the last four digits of their respective taxpayer identification numbers are as follows: Ryckman Creek Resources, LLC (4180), Ryckman Creek Resources Holding Company LLC, Peregrine Rocky Mountains LLC, and Peregrine Midstream Partners LLC (3363). The address of the Debtors’ corporate headquarters is 3 Riverway, Suite 1100, Houston, TX 77056.

² Capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them in the Motion.

2. Background of Declarant. I am a Managing Director at AP Services, LLC (“APS”),³ where I have worked with senior management teams, attorneys, creditors, and employees at all levels to identify process improvements, spot business trends, and take advantage of financial opportunities as a consultant and business unit controller. I have assisted a number of companies with complex restructurings, predominately focused on the energy, shipping, and chemicals sectors.

3. APS has been acting as financial advisor for the Debtors since August 2014. I was designated Vice President of Restructuring of the Debtors on February 29, 2016 [Docket No. 107]. As a result of my history with the Debtors, my review of relevant documents, and my discussions with other members of the Debtors’ management teams, I am familiar with the Debtors’ day-to- day operations, business affairs, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto. Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors’ senior management, my review of relevant documents, or my opinion, based on my experience and knowledge of the Debtors’ operations and financial conditions.

4. The DIP Facility. On March 23, 2016, I completed and executed a declaration (the “Original Declaration”) in support of the Debtors’ motion to obtain postpetition financing (the “Original DIP Motion”). On that day, the Debtors filed the Original Declaration in support of entry of the Final DIP Order.

³ APS is a subsidiary of AlixPartners, LLP that provides interim management services to a variety of companies in and out of chapter 11 restructurings.

5. As described in the Original Declaration, the Debtors and their professionals conducted a thorough and competitive process to get the best possible DIP Facility to address the Company's financial situation. What emerged from that process was the DIP Facility, under which the DIP Lenders agreed to provide an initial Closing Date Commitment of \$35,000,000 and a Blocked Commitment of an additional \$8,000,000.

6. The Debtors Have an Immediate Need for Additional Financing. Now, certain of the DIP Lenders (the "Supplemental DIP Lenders") have discussed providing additional financing under the DIP Facility. Such proposed financing would modify the DIP Credit Agreement to allow the Debtors to obtain up to an additional \$10,000,000 of secured, postpetition financing (the "Additional Financing"), including interim bridge financing of \$2,000,000 (the "Interim Bridge Financing") that could be provided upon entry of the interim order granting the Motion.

7. The Debtors need the Additional Financing described in the Motion to continue operating their business in the ordinary course and preserve the value of their assets, while working to resolve any outstanding issues, obtain exit financing, and confirm a plan of reorganization. Upon examination of the Debtors' books and records, I believe that, absent the Additional Financing, the Debtors will be in need of additional liquidity after March 31, 2017. Without the Additional Financing, the Debtors will not be able to fund the day-to-day operating expenses of their business, including funding the costs of working capital obligations, operating expenses, and expenses related to administration of the Chapter 11 Cases. I believe that the Additional Financing provides the Debtors with adequate liquidity to fund their business operations through the Debtors' projected emergence from chapter 11.

8. The Terms of the Additional Financing are Fair and Reasonable. As set forth in the Original Declaration, the fees, interest rate, and obligations under the DIP Credit Agreement were negotiated in good faith and at arms' length and represent the most favorable terms to the Debtors on which the DIP Lenders would make the DIP Facility available. Additionally, the Debtors considered the fee and the interest rate when determining, in their sound business judgement, that the terms and conditions of the Amendment constituted the best terms on which the Debtors could obtain financing to continue operations and administer the Chapter 11 Cases.

9. The Additional Financing would be provided on the same terms and conditions set forth in the Final DIP Order and the DIP Credit Agreement, except as expressly modified by the Amendment, and the Amendment was negotiated in good faith and at arms' length. Moreover, the Supplemental DIP Lenders are the only realistic source of this financing as they are the lenders under the DIP Facility, and hold liens in substantially all of the Debtors' assets. The Debtors approached several potential sources of third-party debtor-in-possession financing, or parties that might be willing to provide present financing as part of an exit facility. I submit that the Amendment represents the most favorable terms under which the Debtors could obtain the Additional Financing, while preserving value for existing stakeholders and allowing the Debtors continue to pursue alternate sources of exit financing or other investment with interested parties.

10. Accordingly, I believe that the Additional Financing, on the terms set forth in the Amendment, is in the best interest of the Debtors' estates, creditors, and other parties in interest.

Dated: March 15, 2017

/s/ Robert D. Albergotti
Name: Robert D. Albergotti
Title: Vice President of Restructuring

EXHIBIT C

Budget

Peregrine Consolidated
DIP Cash Flow Budget
March 14, 2017

Act / Proj Week Number Date / Week	March 2017	March 2017	March 2017	April 2017	April 2017	April 2017	April 2017	7 Week Projected 3/17/2017 4/28/2017
	Proj 1 3/17/2017	Proj 2 3/24/2017	Proj 3 3/31/2017	Proj 4 4/7/2017	Proj 5 4/14/2017	Proj 6 4/21/2017	Proj 7 4/28/2017	
	Total Receipts	-	-	400,000	-	-	-	
Total Field Operating Disbursements	(200,000)	(630,000)	(420,000)	(85,000)	(210,000)	(550,000)	(235,000)	(2,330,000)
Total Natural Gas Purchases	-	-	(235,000)	-	-	-	-	(235,000)
Total Capex:	(246,000)	(290,000)	(70,000)	(50,000)	-	-	(45,000)	(701,000)
Total SG&A Costs	(44,000)	(2,500)	(42,500)	(32,500)	(44,000)	(2,500)	(42,500)	(210,500)
Cash Flow before Financings	(490,000)	(922,500)	(367,500)	(167,500)	(254,000)	(552,500)	(65,674)	(2,819,674)
Financing:								
Debtor In Possession Loan Borrowing	2,000,000	3,000,000	-	-	-	-	-	5,000,000
Debtor In Possession Loan Repayment	-	-	-	-	-	-	-	-
Interest Payment / Financial Hedges	-	-	(350,000)	-	-	-	(350,000)	(700,000)
Tranche A	-	-	-	-	-	-	-	-
Total Financing	2,000,000	3,000,000	(350,000)	-	-	-	(350,000)	4,300,000
Total Filing Related Costs ⁽¹⁾	(685,070)	(50,000)	(1,100,000)	-	(850,000)	-	-	(2,685,070)
Net Cash Flow	824,930	2,027,500	(1,817,500)	(167,500)	(1,104,000)	(552,500)	(415,674)	(1,204,744)
Opening Cash	1,311,577	2,136,507	4,164,007	2,346,507	2,179,007	1,075,007	522,507	1,311,577
Net Cash Flow	824,930	2,027,500	(1,817,500)	(167,500)	(1,104,000)	(552,500)	(415,674)	(1,204,744)
Closing Cash	2,136,507	4,164,007	2,346,507	2,179,007	1,075,007	522,507	106,833	106,833

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

	x	
	:	
In re:	:	Chapter 11
	:	
RYCKMAN CREEK RESOURCES, LLC,	:	Case No. 16-10292 (KJC)
et al.,	:	
	:	Jointly Administered
Debtors. ¹	:	
	:	Re: Docket Nos. 17, 44, 50, 88, 97, 98, 102, 116,
	:	121, 159, 171, 172, 180, 181, 185, 186, 187, 188, 192,
	x	195, 783, 789, 799, 801, __

**INTERIM ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP FACILITY
TO OBTAIN ADDITIONAL FINANCING AND GRATING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors under sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), for entry of this Interim Supplemental Order and the Final Supplemental Order (i) authorizing the Debtors to obtain Interim Bridge Financing under the terms of the Amendment, this Interim Supplemental Order, the Final DIP Order, and the DIP Credit Agreement; (ii) authorizing the Debtors to enter into the Amendment, attached as Exhibit A to the Motion, to obtain the Additional Financing on a secured, superpriority basis; (iii) continuing to grant adequate protection pursuant to the terms of the Final DIP Order; (iv) extending the liens, security interests, and superpriority claims of the

¹ The Debtors and, where applicable, the last four digits of their respective taxpayer identification numbers are as follows: Ryckman Creek Resources, LLC (4180), Ryckman Creek Resources Holding Company LLC, Peregrine Rocky Mountains LLC, and Peregrine Midstream Partners LLC (3363). The address of the Debtors’ corporate headquarters is 3 Riverway, Suite 1100, Houston, TX 77056.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Final DIP Order, as applicable.

DIP Lenders to cover the Supplemental DIP Lenders with respect to the Additional Financing; (v) scheduling a final hearing; and (vi) granting related relief; and due and sufficient notice of the Motion, the relief requested therein, and the hearing on the Motion (the "Hearing") having been given under the particular circumstances; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by this Court; and upon the record made by the Debtors in the Motion, the Albergotti Declaration, at the Hearing, and at the hearing on the Final DIP Order; and after due deliberation thereon; and good and sufficient cause appearing therefor; if is hereby,

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on an interim basis as set forth herein. Any objections to the Motion with respect to the entry of this Interim Supplemental Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. This Court has core jurisdiction over the Debtors' bankruptcy cases, the Motion, and the parties and property affected by this Interim Supplemental Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Hearing constitutes due and sufficient notice of the Motion and the Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The final hearing on the Motion is set for April 25, 2017 at 11:00 a.m. (Eastern). Any objections or responses to the entry of the proposed Final Supplemental Order shall be filed and served upon counsel for the Debtors so as to be received by April 11, 2017 at 4:00 p.m. (Eastern).

5. The Debtors are authorized to enter into the Amendment, and the transactions contemplated thereby are authorized and approved in all respects on an interim basis; provided, however, that prior to the entry of the Final Supplemental Order, the Debtors may not obtain any financing amounts pursuant to the Amendment in excess of the limits provided for under the terms of the Amendment governing the Interim Bridge Financing. The Debtors, the DIP Lenders, and the Supplemental DIP Lenders are authorized to execute and deliver the Amendment and any other related documents, as required, and the Debtors may borrow the Additional Financing on the terms and conditions of the DIP Credit Agreement, the Final DIP Order, and this Interim Supplemental Order. The Debtors are hereby authorized to obtain the Interim Bridge Financing and to perform and do all acts, including to make, execute, and deliver all instruments and documents and to pay fees and other amounts that may be reasonably required or necessary for the Debtor's performance under the DIP Loan Documents (including the Amendment) or in connection with the Interim Bridge Financing.

6. Good cause has been shown for entry of this Interim Supplemental Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Additional Financing.

7. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under Bankruptcy Code section 503(b)(1) as an administrative expense pursuant to Bankruptcy Code section 364(a) or (b); (ii) unsecured debt having the priority afforded by Bankruptcy Code section 364(c)(1); or (iii) secured debt under Bankruptcy Code section 364(c)(2) or (3). No other source of financing exists on terms more favorable than those offered in connection with the Additional Financing.

8. Any Advances made to provide the Interim Bridge Financing, and the Additional Financing (subject to entry of the Final Supplemental Order), shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and shall be granted superpriority administrative claim status for all purposes hereunder, pursuant to the Final DIP Order and the DIP Loan Documents, which, for the avoidance of doubt, shall include the Amendment. Except as expressly provided in the Final DIP Order and except to the extent of, and up to, the Carve-Out permitted under the DIP Credit Agreement, no claims having an administrative priority superior to or pari passu with such Obligations shall be granted while any portion thereof remains outstanding, without the consent of the DIP Lenders in accordance with the DIP Loan Documents.

9. The terms of the Amendment are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration and the Supplemental DIP Lenders are entitled to the protections of Bankruptcy Code section 364(e).

10. All rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lenders in the Final DIP Order and the DIP Loan Documents with respect to or relating to the DIP Facility shall apply with equal force and effect

to the Supplemental DIP Lenders with respect to the Additional Financing (including the Interim Bridge Financing), and all obligations in connection therewith or related thereto, and the various claims, liens, superpriority claims, and other protections granted pursuant to this Interim Supplemental Order will not be affected by any subsequent reversal or modification of this Interim Supplemental Order, the Final DIP Order, or any other order, as provided in Bankruptcy Code section 364(e), which is applicable to the postpetition financing arrangements contemplated by this Interim Supplemental Order. The Interim Bridge Financing, and the Additional Financing (subject to entry of the Final Supplemental Order), will rank pari passu in right of payment and security with the Advances made pursuant to the Closing Date Commitment and the Blocked Commitment.

11. The terms of the Final DIP Order are incorporated herein and made a part of this Interim Supplemental Order. Except to the extent modified by this Interim Supplemental Order and the Amendment, the Final DIP Order remains in full force and effect, including with respect to the Interim Bridge Financing. All factual and other findings and conclusions of law contained in the Final DIP Order shall remain fully applicable, including with respect to the Additional Financing and Interim Bridge Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Interim Supplemental Order, the Final DIP Order, and the Amendment, the provisions of the Final DIP Order shall govern, except as expressly modified by the Amendment and this Interim Supplemental Order.

12. For the avoidance of doubt, this Interim Supplemental Order shall not alter the adequate protection provisions under the Final DIP Order, which shall remain in full force and effect with respect to the Additional Financing and Interim Bridge Financing.

13. The provisions of this Interim Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Supplemental DIP Lenders, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors).

14. All liens and priority granted to the Supplemental DIP Lenders pursuant to this Interim Supplemental Order shall be deemed automatically perfected by operation of law upon the entry of this Interim Supplemental Order.

15. Notwithstanding the allocation of Additional Financing commitments among the Supplemental DIP Lenders initially proposed in the Amendment, the allocation of Additional Financing commitments may, upon the written consent of the Debtors and each of the Supplemental DIP Lenders, be re-apportioned among the Supplemental DIP Lenders in any manner that the Supplemental DIP lenders deem appropriate or desirable, without further notice or order of the Court.

16. This Court finds and determines that the requirements of Bankruptcy Rule 6004 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

17. This Interim Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), or any other Bankruptcy Rule, this Interim Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Supplemental Order.

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Supplemental Order.

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Supplemental Order and the Amendment.

Dated: Wilmington, Delaware

_____, 2017

Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE

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

	X	
	:	
In re:	:	Chapter 11
	:	
RYCKMAN CREEK RESOURCES, LLC,	:	Case No. 16-10292 (KJC)
et al.,	:	
	:	Jointly Administered
Debtors. ¹	:	
	:	Re: Docket Nos. 17, 44, 50, 88, 97, 98, 102, 116,
	:	121, 159, 171, 172, 180, 181, 185, 186, 187, 188, 192,
	:	195, 783, 789, 799, 801, __
	X	

**FINAL ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP FACILITY TO
OBTAIN ADDITIONAL FINANCING AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of this Final Supplemental Order, under sections 105, 361, 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), (i) approving the Interim Bridge Financing and entry into the Amendment on a final basis; (ii) authorizing the Debtors to obtain the Additional Financing pursuant to the Amendment on a secured, superpriority basis; (iii) continuing to grant adequate protection pursuant to the terms of the Final DIP Order; (iv) extending the liens, security interests, and superpriority claims of the DIP Lenders to cover the Supplemental DIP Lenders with respect to the Additional Financing; and (v) granting related relief; and due and sufficient notice of the

¹ The Debtors and, where applicable, the last four digits of their respective taxpayer identification numbers are as follows: Ryckman Creek Resources, LLC (4180), Ryckman Creek Resources Holding Company LLC, Peregrine Rocky Mountains LLC, and Peregrine Midstream Partners LLC (3363). The address of the Debtors’ corporate headquarters is 3 Riverway, Suite 1100, Houston, TX 77056.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Final DIP Order, as applicable.

Motion, the relief requested therein, and the final hearing on the Motion (the “Final Hearing”) having been given under the particular circumstances; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by this Court; and upon the record made by the Debtors in the Motion, the Albergotti Declaration, at the Final Hearing, and at the hearing on the Final DIP Order; and after due deliberation thereon; and good and sufficient cause appearing therefor; if is hereby,

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein. Any objections to the Motion with respect to the entry of this Final Supplemental Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. This Court has core jurisdiction over the Debtors’ bankruptcy cases, the Motion, and the parties and property affected by this Final Supplemental Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Final Hearing constitutes due and sufficient notice of the Motion and the Final Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The Amendment to the DIP Credit Agreement authorizing the Debtors to obtain the Interim Bridge Financing and the Additional Financing is hereby approved in all respects. The Debtors may borrow the Additional Financing on the terms and conditions of the

DIP Credit Agreement, the Final DIP Order, the Interim Supplemental Order, and this Final Supplemental Order; provided, however, that the Debtors may not obtain any amounts in excess of the total limits provided for under Amendment, inclusive of any amounts provided pursuant to the Interim Bridge Financing. The Debtors are hereby authorized to obtain the Additional Financing and to perform and do all acts, including to make, execute, and deliver all instruments and documents and to pay fees and other amounts that may be reasonably required or necessary for the Debtor's performance under the DIP Loan Documents (including the Amendment) or in connection with the Additional Financing.

5. Good cause has been shown for entry of this Final Supplemental Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Additional Financing.

6. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under Bankruptcy Code section 503(b)(1) as an administrative expense pursuant to Bankruptcy Code section 364(a) or (b); (ii) unsecured debt having the priority afforded by Bankruptcy Code section 364(c)(1); or (iii) secured debt under Bankruptcy Code section 364(c)(2) or (3). No other source of financing exists on terms more favorable than those offered in connection with the Additional Financing.

7. Any Advances made pursuant to the Amendment shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and shall be granted superpriority administrative claim status for all purposes hereunder, pursuant to the Final DIP Order and the DIP Loan Documents, which, for

the avoidance of doubt, shall include the Amendment. Except as expressly provided in the Final DIP Order and except to the extent of, and up to, the Carve-Out permitted under the DIP Credit Agreement, no claims having an administrative priority superior to or pari passu with such Obligations shall be granted while any portion thereof remains outstanding, without the consent of the DIP Lenders in accordance with the DIP Loan Documents.

8. The terms of the Amendment are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. Accordingly, the Supplemental DIP Lenders are entitled to the protections of Bankruptcy Code section 364(e).

9. All rights, remedies, claims, privileges, liens, or security interests granted to or in favor of, or conferred upon, the DIP Lenders in the Final DIP Order and the DIP Loan Documents with respect to or relating to the DIP Facility shall apply with equal force and effect to the Supplemental DIP Lenders with respect to the Additional Financing, and all obligations in connection therewith or related thereto, and the various claims, liens, superpriority claims, and other protections granted pursuant to this Final Supplemental Order will not be affected by any subsequent reversal or modification of this Final Supplemental Order, the Interim Supplemental Order, the Final DIP Order, or any other order, as provided in Bankruptcy Code section 364(e), which is applicable to the postpetition financing arrangements contemplated by this Final Supplemental Order. The Additional Financing will rank pari passu in right of payment and security with the Advances made pursuant to the Closing Date Commitment and the Blocked Commitment.

10. The terms of the Final DIP Order are incorporated herein and made a part of this Final Supplemental Order. Except to the extent modified by this Final Supplemental

Order and the Amendment, the Final DIP Order remains in full force and effect, including with respect to the Additional Financing. All factual and other findings and conclusions of law contained in the Final DIP Order shall remain fully applicable, including with respect to the Additional Financing, except to the extent specifically modified herein. In the event of any inconsistency among the provisions of this Interim Supplemental Order, the Final DIP Order, and the Amendment, the provisions of the Final DIP Order shall govern, except as expressly modified by the Supplemental Orders.

11. For the avoidance of doubt, this Final Supplemental Order shall not alter the adequate protection provisions under the Final DIP Order, which shall remain in full force and effect with respect to the Additional Financing.

12. The provisions of this Final Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Supplemental DIP Lenders, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors).

13. All liens, security interests, and priority granted to the Supplemental DIP Lenders pursuant to this Final Supplemental Order shall be deemed automatically perfected by operation of law upon entry of this Final Supplemental Order, and all liens, security interests, and priority granted to the Supplemental DIP Lenders pursuant to the Interim Supplemental Order shall be deemed automatically perfected by operation of law as of the date of entry of the Interim Supplemental Order.

14. This Final Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof.

To the extent applicable, notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), or any other Bankruptcy Rule, this Final Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Supplemental Order.

15. Notwithstanding the allocation of Additional Financing commitments among the Supplemental DIP Lenders initially proposed in the Amendment, the allocation of Additional Financing commitments may, upon the written consent of the Debtors and each of the Supplemental DIP Lenders, be re-apportioned among the Supplemental DIP Lenders in any manner that the Supplemental DIP lenders deem appropriate or desirable, without further notice or order of the Court.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Supplemental Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Supplemental Order and the Amendment.

Dated: Wilmington, Delaware

_____, 2017

Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE