

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

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In re	:	Chapter 11
	:	
GENERAL WIRELESS OPERATIONS INC.	:	Case No. 17-10506 (BLS)
DBA RADIOSHACK, <i>et al.</i> <sup>1</sup>	:	
	:	Jointly Administered
Debtors.	:	

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Requested Hearing Date: 8/16/17 10:00 a.m.  
Requested Objection Deadline: 8/11/17 4:00 p.m.

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO  
11 U.S.C. §105, 107, 361, 362, 363, 364 AND 507 AND RULES 2002, 4001, 9014  
AND 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
(I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION  
FINANCING; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS;  
AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move the Court for the entry of an order, in substantially the form attached hereto as Exhibit A (the “DIP Order”), under sections 105, 107, 361, 362, 363, 364(c), 364(d)(1), 364(e), and 507 of Bankruptcy Code, Rules 2002, 4001, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-2 and 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) authorizing the Debtors to obtain postpetition financing pursuant to a debtor-in-possession financing facility on the terms described herein; (b) granting liens and super priority administrative claims; and (c) granting related relief (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (58 13). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76 102-1964.

## INTRODUCTION

Since the commencement of these cases, the Debtors have financed their operations solely by utilizing cash collateral, first pursuant to an interim cash collateral order and then pursuant to a final cash collateral order entered on April 11, 2017 (the “Final Cash Collateral Order”).<sup>2</sup> The substantial reduction in cash flow from brick and mortar operations, combined with restructuring expenses and certain ongoing legacy expenses, including healthcare, have impacted the Debtors’ near term liquidity. Going forward, the Debtors intend to (i) continue the orderly sale of their inventory; and (ii) propose and confirm a plan of reorganization, all in an effort to maximize value for the benefit of their creditors. However, because of the Debtors’ liquidity issues, to do so the Debtors require a prompt capital infusion.

The Debtors do not wish to disrupt the terms upon which they are currently authorized to use cash collateral, and hence they do not seek a modification of the Final Cash Collateral Order. Rather, the instant motion simply seeks approval of a proposed debtor-in-possession financing facility (the “DIP Facility”) by which lenders affiliated with the Debtors’ existing the Junior Lien Creditors (as such term is defined in the Final Cash Collateral Order), (collectively, the “DIP Lenders”) will provide up to \$2 million of financing (the “DIP Financing”) secured by first priority liens and superpriority claims which shall be junior to the Carve-Out and Junior Permitted Liens, but senior to the liens and claims of the Junior Lien Creditors. The proposed postpetition financing will, among other things, provide capital necessary to allow the Debtors to continue the orderly sale of inventory and pursue a plan of reorganization.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Final Cash Collateral Order.

The Debtors seek authorization to obtain postpetition financing pursuant to the terms set forth in this Motion, that certain Debtor-In- Possession Credit Agreement attached hereto as Exhibit B (the “DIP Credit Agreement”), and the DIP Order. The Debtors intend to use the proceeds of the DIP Facility on the terms set forth in the Budget (as defined below), the DIP Credit Agreement and the DIP Order.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. sections 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. section 157(b). The Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue for this matter is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 107, 361, 362, 363, 364(c), 364(d)(1), 364(e) and 507 of the Bankruptcy Code, Rules 2002 and 4001 of the Bankruptcy Rules, and Local Rule 4001-2.

### **BACKGROUND**

4. On March 8, 2017 (the “Petition Date”), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. Following the Petition Date, the Court entered the Cash Collateral Orders (as defined in the Final Cash Collateral Order) authorizing the Debtors to utilize Cash Collateral first on an interim, and then on a final basis. Such Cash Collateral has been used to fund, among other things, operations to effect an orderly liquidation of inventory, the closure of all but thirty of the Debtors' brick and mortar stores, and the administration of these Cases.

6. As a consequence of such efforts, the Debtors have paid in full all obligations owed to the Senior Lien Creditors (other than any outstanding letters of credit, which are cash-collateralized), and the Senior Loan Repayment Date as defined in the Final Cash Collateral Order has occurred. In addition, pursuant to the Final Cash Collateral Order the Debtors paid down approximately \$18 million of Junior Prepetition Obligations since the Petition Date. The remaining principal balance of term loans owed to the "first-out" Junior Lien Creditors is approximately \$22 million, and the principal balance of revolving loans owed to the "last-out" Junior Lien Creditors is approximately \$50 million. Finally, the Debtors have kept current with their administrative obligations, including funding professional fee escrows to the extent provided in the Budget and paying in full so-called stub rent as required under the Final Cash Collateral Order.

7. The Debtors continue to operate a small number of brick and mortar stores, as well as their ecommerce operations and dealer network. Further, the Debtors have remaining inventory with a book value of approximately \$16 million, which is subject to the liens of the Junior Lien Creditors.

8. Under their prevailing cash collateral Budget, the Debtors project a need for additional liquidity by the week ending August 18, 2017.

***The Debtors' Objectives***

9. The Debtors' goal is to maximize the return for creditors. Toward that end, the Debtors, Junior Lien Creditors and Creditors' Committee have been engaged in plan discussions which have resulted in an agreement in principal on a global settlement among the Debtors, the Committee and the Second Lien Creditors, which will be incorporated into a Chapter 11 Plan Support Agreement to be executed by those parties (the "Plan Support Agreement"). The Debtors intend to propose a plan of reorganization centered around the restructuring to be reflected in the Plan Support Agreement.

10. In order to achieve these objectives, it is critical that the Debtors have adequate liquidity to finance their operations and the administration of these cases, and to prosecute a plan of reorganization as described above.

11. Although the Debtors' current Budget does not reflect a negative cash position, the Debtors are concerned that their declining cash balance in mid-to-late August will leave them with little margin for error. The Debtors want to ensure that they have adequate capital in order to meet their administrative obligations while pursuing a consensual plan process. Therefore, the Debtors have arranged for the DIP Facility and have filed this motion seeking approval thereof.

***Existing Lien Creditors***

12. The Debtors believe that an orderly sale of inventory, coupled with the proposal of a confirmable Chapter 11 plan, will afford their Junior Lien Creditors and other creditor constituencies the highest and best value as compared to a liquidation under Chapter 7. The Debtors are advised that the Junior Lien Creditors assent to this Motion.

**RELIEF REQUESTED**

13. By this Motion, the Debtors seek entry of the DIP Order:
- (a) authorizing the Debtors to obtain postpetition financing from the DIP Lenders as set forth below and in the DIP Credit Agreement with funds thereunder available for use in accordance with the Budget<sup>3</sup> and the terms of the DIP Credit Agreement;
  - (b) authorizing the Debtors to grant security interests, liens and super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on the Collateral (as defined in the Final Cash Collateral Order) (collectively, the “DIP Liens”), provided, however, that the DIP Liens and super-priority administrative claim shall be subordinate, and junior in all respects to the Carve-Out and Junior Permitted Liens to the extent set forth in the Final Cash Collateral Order and the DIP Order;
  - (c) authorizing the Debtors to make non-refundable payments of the principal, interest, fees, expenses and other amounts payable in accordance with the terms of the DIP Facility and the DIP Order approving the DIP Facility; and
  - (d) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement the terms of the DIP Credit Agreement and DIP Order.

***Debtors’ Efforts to Obtain Postpetition Financing***

14. The Debtors have explored their options with respect to postpetition financing. These options were limited by the Debtors’ prepetition debt structure and liens encumbering substantially all of their assets. The Debtors ultimately determined that a financing proposal by the DIP Lenders provides the Debtors with the best opportunity to continue their remaining operations and pursue a potential plan of reorganization.

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<sup>3</sup> The Budget for the purposes of the DIP Financing will be the prevailing cash collateral Budget in effect from time to time pursuant to the Final Cash Collateral Order, as modified to reflect the DIP Loan borrowings.

***Material Terms of the DIP Facility***

15. The principal terms of the DIP Facility are as follows:<sup>4</sup>

Borrower: <i>Credit Agreement, Definitions</i>	General Wireless Operations Inc. and its affiliated chapter 11 debtors
DIP Agent and DIP Lenders: <i>Credit Agreement, Definitions</i>	DIP Agent: Cortland Capital Market Services LLC, as agent for the DIP Lenders (the “ <u>DIP Agent</u> ”)  DIP Lenders: Affiliates of certain Junior Lien Creditors (collectively, the “ <u>DIP Lenders</u> ”).
DIP Facility: <i>Credit Agreement, §1.1</i>	Postpetition financing in a total principal amount of up to \$2,000,000 (the “ <u>DIP Financing</u> ”).
Carve-Out:	The Carve-Out applicable to the DIP Financing shall be identical to the Carve-Out under and as defined in the Final Cash Collateral Order, as modified by paragraph 14 of the DIP Order.
Interest Rate and Fees: <i>Credit Agreement, §1.3</i>	Interest Rate: LIBOR plus ten percent (10%).  Agent Fee: TBD  Other: As compensation for the DIP Facility, an amount equal to 3% of the total commitment shall be deducted from the initial borrowing. In addition, a facility fee shall be payable monthly calculated at a 1½% annualized rate.
Priority and Security: <i>Credit Agreement, ¶¶ 3 and 4</i>	In respect of the DIP Financing the DIP Lenders shall have Liens on all on the Collateral (as defined in the Final Cash Collateral Order) and superpriority claims that shall be (a) subordinate and junior to (i) Junior Permitted Liens (which are senior to the liens of the Junior Lien Creditors under the Final Cash Collateral Order), and (ii) the Carve-Out, and (b) senior to the liens and superpriority claims of the Junior Lien Agent and Junior Lien Creditors under the Final Cash Collateral Order.
Budget: <i>Credit Agreement, § D(v)</i>	Proceeds of the DIP Financing may be used to operate the business of the Debtors to the extent permitted by the Budget in effect from time to time under the DIP Order, the

<sup>4</sup> This summary is qualified, in its entirety by the provisions of the DIP Credit Agreement and the proposed DIP Order. Unless otherwise set forth in this summary, capitalized terms used within this summary shall have the meanings ascribed to them in the Final Cash Collateral Order.

	DIP Credit Agreement and the Final Cash Collateral Order.
Conditions Precedent: <i>Credit Agreement, § 2.1</i>	Conditions precedent include without limitation (i) execution and delivery of the DIP Credit Agreement and related loan documents; (ii) entry of the DIP Order; and (iii) execution of the Plan Support Agreement.
Representations and Warranties: <i>Credit Agreement, Article III</i>	The DIP Credit Agreement includes representations and warranties of a kind usual and customary for a facility of this type.
Events of Default: <i>Credit Agreement §7.1</i>	<p>The DIP Credit Agreement provides for standard events of default for a facility of this type, including, without limitation, the following bankruptcy-related defaults:</p> <ul style="list-style-type: none"> <li>• Any Borrower fails to pay when and as required to be paid herein, any amount of any Loan within three (3) Business Days from the date that such amount has become due;</li> <li>• Any representation, warranty or certification by or on behalf of any Borrower made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made.</li> <li>• Any Borrower fails to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of ten (10) days after the earlier to occur of (i) the date upon which a Responsible Officer of any Borrower becomes aware of such default and (ii) the date upon which written notice thereof is given to the Borrowers by the DIP Agent, at the direction of the DIP Lenders;</li> <li>• the DIP Order is not entered by August 18, 2017;</li> <li>• other than in connection with the payment in full or other satisfaction or refinancing of the Obligations,</li> </ul>



	<p>the filing of any motion, taking of any action or the filing of any Reorganization Plan or disclosure statement in the Cases by any Borrower (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code, (B) to grant any Lien upon or affecting any Collateral, (C) except as provided in the Final Cash Collateral Order and the DIP Order, to use cash collateral under Section 363(c) of the Bankruptcy Code without prior written consent of the DIP Lenders, (D) that seeks to prohibit the DIP Lenders from credit bidding on any or all of the Borrowers' assets during the pendency of the Cases or (E) that is otherwise materially adverse to the rights and remedies granted to the DIP Agent or the DIP Lenders hereunder or under the DIP Order;</p> <ul style="list-style-type: none"> <li>• the DIP Credit Agreement, any of the other Loan Documents, the DIP Order or the Final Cash Collateral Order for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or any of the Borrowers shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Borrower or such Person) any other Person's motion to, disallow in whole or in part the DIP Agent's or the DIP Lenders' claims in respect of the Obligations or to challenge the validity of any portion of the Loan Documents, the Loans, the Junior Loan Credit Documents and the related obligations or the applicability or enforceability of same or which seeks to void, limit, subordinate or otherwise adversely affect any Liens in favor of any of the DIP Agent or DIP Lenders (or the Junior Lien Creditors, as applicable) or any payment pursuant to the Loan Documents or the Junior Loan Credit Documents;</li> <li>• any Lien or security interest purported to be created under this Agreement or any Collateral document shall cease to be, or shall be asserted by any Borrower not to be, a valid and perfected Lien on or security interest in any of the Collateral, with the priority set forth herein and in the related Loan</li> </ul>
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	<p>Documents;</p> <ul style="list-style-type: none"><li>• the Bankruptcy Court shall enter one or more orders granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any one or more creditors to execute upon or enforce liens on or security interests in any Collateral that individually or cumulatively has an aggregate fair market value in excess of \$150,000 (subject to customary exceptions and other exceptions to be agreed upon, including, without limitation, exceptions for enforcement of rights with respect to Cash Collateral supporting letters of credit, utilities and insurance programs, the Senior Challenge Reserve (as defined in the Final Cash Collateral Order) and funds held in the Pepper Hamilton LLP Client Trust Account and Kelley Drye &amp; Warren LLP Trust Account of account of professional fees and expenses pursuant to the terms of the Final Cash Collateral Order;</li><li>• the Bankruptcy Court shall enter any order revoking, reversing, staying, vacating, rescinding, or materially modifying, supplementing or amending in each case, without the consent of the DIP Lenders, the DIP Order or the Final Cash Collateral Order;</li><li>• any application for any of the orders described in the three immediately preceding bullet points shall be made and, if made by a Person other than a Borrower, such application is not being diligently contested by the Borrowers in good faith;</li><li>• the Bankruptcy Court shall enter any order (which has not been reversed or vacated within five (5) calendar days) : (a) appointing a Chapter 11 trustee under Section 1104 of the Bankruptcy Code in the Case, (b) appointing an 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 in the Case or otherwise or (c) dismissing the Case or converting the Case to a Chapter 7 case;</li><li>• a reorganization plan is filed in the Cases that does not provide for (I)(A) the indefeasible payment in</li></ul>
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	<p>full in cash of all Obligations outstanding under the DIP Facility (or other treatment acceptable to the Lenders) and (B) the release of the DIP Agent and the DIP Lenders (in their respective capacities as such) in full from all claims of the Borrowers and their estates, in each case on or before the effective date of such reorganization plan, and (II) the continuation of the Liens and security interests granted to the DIP Agent and DIP Lenders until the effective date of such reorganization plan;</p> <ul style="list-style-type: none"> <li>• the occurrence of the Termination Date under and as defined in the Final Cash Collateral Order;</li> <li>• a breach of the terms of the Plan Support Agreement by any Borrower or the Creditors' Committee, subject to any applicable grace period therein; and</li> <li>• a breach of the terms or provisions of the DIP Order or the Final Cash Collateral Order.</li> </ul>
<p>Maturity/Termination Date: <i>Credit Agreement, Definitions and § 1.8</i></p>	<p>The earlier of (x) the date that is four (4) months after the entry of the DIP Order by the Bankruptcy Court or (y) the effective date of a Chapter 11 plan in the Case.</p>
<p>Adequate Protection: <i>DIP Order, ¶ 6</i></p>	<p>The Junior Lien Creditors and the Junior Lien Agent shall retain as adequate protection the Junior Replacement Liens and superpriority claims granted to them under the Final Cash Collateral Order, in accordance with the terms of such order, as supplemented by the DIP Order.</p>
<p>Section 506(c) Waiver: <i>DIP Order, ¶ E</i></p>	<p>Upon entry of the DIP Order, to the extent provided in the Final Cash Collateral Order no person will be permitted to surcharge the Collateral under section 506(c) of the Bankruptcy Code, nor shall any costs or expenses be imposed against the Collateral, except for the Carve-Out.</p>
<p>Section 552(b): <i>DIP Order ¶ E</i></p>	<p>Upon entry of the DIP Order, to the extent provided in the Final Cash Collateral Order the DIP Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent or the DIP Lenders with respect to proceeds, product, offspring or profits of any of the Collateral.</p>

Expenses: <i>DIP Order</i> , ¶ 3	Reimbursement of the reasonable and documented attorneys' fees and expenses of the DIP Agent and DIP Lenders.
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***Local Rule 4001-2***

16. Rule 4001-2 of the Local Rules requires that certain provisions contained in the DIP Credit Agreement be highlighted and that the Debtors provide justification for the inclusion of such highlighted provision(s).

17. Local Rule 4001-2(a)(i) provides:

Provisions to be Highlighted. All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (c) justify the inclusion of such provision:

(A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

(B) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;

(C) Provisions that seek to waive, without notice, whatever rights the estate may have under 11 U.S.C. §506(c);

(D) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;

(E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

(F) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve out;

(G) Provisions that prime any secured lien without the consent of that lienor; and

(H) Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1).

18. The Debtors identify and discuss the following provisions of the DIP Credit Agreement and DIP Order in accordance with Local Rule 4001-2 in the context and circumstances of these cases.

***Local Rule 4001-2(a)(i)(A)***

19. Local Rule 4001-2(a)(i)(A) requires disclosure of provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law). This is inapplicable because the Debtors do not seek such relief by the instant Motion.

***Local Rule 4001-2(a)(i)(B)***

20. Local Rule 4001-2(a)(i)(B) requires disclosure of provisions that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters. This is inapplicable because the Debtors do not seek such relief by the instant Motion.

***Local Rule 4001-2(a)(i)(C)***

21. Local Rule 4001-2(a)(i)(C) requires explicit disclosure of provisions that constitute a waiver, without notice, of the estates' rights under Bankruptcy Code section 506(c). In light of the DIP Agent's and the DIP Lenders' agreement to subordinate the DIP Liens on the Collateral and the DIP Superpriority Claim to the Carve-Out and the other terms of the DIP Order, including the provisions of the Budget, the DIP Order provides for a waiver of the provisions of section 506(c) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code.

***Local Rule 4001-2(a)(i)(D)***

22. Local Rule 4001-2(a)(i)(D) requires disclosure of provisions under which the Debtors immediately grant the prepetition secured lenders liens on the Debtors' claims or causes of action under 11 U.S.C. §§ 544, 545, 547, 548 and 549 (the "Avoidance Actions"). The DIP Liens shall not attach to any Avoidance Actions, but shall attach to any proceeds of Avoidance Actions. *DIP Order*, ¶ 3.

***Local Rule 4001-2(a)(i)(E)***

23. Pursuant to Local Rule 4001-2(a)(i)(E), a movant must describe provisions of the proposed debtor-in-possession facility that deem prepetition secured debt to constitute postpetition debt. See Del. Bankr. L.R. 4001-2(a)(i)(E). This is inapplicable because the Debtors do not seek such relief by the instant Motion.

***Local Rule 4001-2(a)(i)(F)***

24. Pursuant to Local Rule 4001-2(a)(i)(F), a movant must describe provisions of the proposed debtor-in-possession facility that provide disparate treatment for professionals retained by a creditors' committee with respect to a professional fee carve-out. The Budget applicable to the DIP Facility will be the same Budget in effect under the Final Cash Collateral

Order, as such Budget may be modified from time to time pursuant to the procedures set forth in the Final Cash Collateral Order and the DIP Order. While that Budget to date has provided a specified weekly funded carve-out for Committee professionals, under the anticipated terms of the Plan Support Agreement the Committee will not have a funded carve-out for fees accruing after execution of that agreement.

***Local Rule 4001-2(a)(i)(G)***

25. Pursuant to Local Rule 4001-2(a)(i)(G), a movant must describe provisions of the proposed debtor-in-possession facility that contemplates a priming of any secured lien without the consent of that lienor. See Del. Bankr. L.R. 4001-2(a)(i)(G). Any remaining liens of the Senior Lien Creditors shall not be primed. The liens of the Junior Lien Creditors will be primed with their consent.

***Local Rule 4001-2(a)(i)(H)***

26. Pursuant to Local Rule 4001-2(a)(i)(H), a movant must describe provisions of the proposed debtor-in-possession facility that seek to affect the Court's power to consider the equities of the case under section 552(b)(1) of the Bankruptcy Code. The proposed order provides for a waiver of the "equities of the case" exception under section 552(b)(1) of the Bankruptcy Code to the extent that the same already is included in the Final Cash Collateral Order.

***The Bankruptcy Code Provides a Basis for the Relief Requested***

27. Bankruptcy Code section 364(c) provides:

If the [debtor-in-possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt -

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

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

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

11 U.S.C. § 364(c).

28. Bankruptcy code section 364(d)(1) provides:

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if -

(A) the [debtor-in-possession] is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

29. Bankruptcy Rule 4001(c)(2) provides, in relevant part:

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).

30. Bankruptcy Rule 4001(d) provides, in relevant part, that (i) a motion for approval to modify or terminate the automatic stay shall be served on any committee appointed pursuant to Bankruptcy Code section 1102, on the creditors included on the list filed under Bankruptcy Rule 1007(d), and on such other entities as the court may direct, and (ii) objections may be filed within 14 days of the mailing of the notice of the motion and the time for filing objections thereto. See Fed. R. Bankr. P. 4001(l) - (2).



*The DIP Credit Agreement*

31. As set forth above, given the amount and scope of Debtors' existing secured debt, they are unable to obtain postpetition financing on an unsecured basis and are likewise unable to obtain postpetition financing secured by a non-consensual lien junior to the liens of the Junior Lien Agent or a lien on unencumbered assets. The Debtors negotiated the DIP Facility at arm's-length and have determined, in the exercise of their business judgment, that it is the best proposal under the circumstances. Provided that this judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. See, e.g., In re Ames Dept. Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (courts have discretion under Bankruptcy Code § 364 to permit debtors to exercise reasonable business judgment so long as (i) the terms of the financing agreement do not "leverage the bankruptcy process and powers" and (ii) the financing agreement's purpose is primarily to benefit the estate, and not a party in interest).

32. The DIP Facility provides additional liquidity to the Debtors to enable them, inter alia, to (i) minimize disruption to their business and operations, (ii) preserve and maximize the value of their estates for the benefit of all creditors, (iii) avoid immediate and irreparable harm to their businesses, creditors, employees, and assets, (iv) continue with an orderly liquidation of inventory; and (v) formulate, propose and confirm a plan of reorganization. Without the financing provided under the DIP Facility, the Debtors may not be able to meet their operating and administrative expenses. As a result, the estate and its creditors would suffer irreparable harm.

33. The Debtors believe that the terms and conditions of the DIP Facility are fair and reasonable under the circumstances and that the DIP Facility was negotiated at arm's length and in good faith. Accordingly, the Debtors request that the DIP Agent and DIP Lenders

be afforded the benefits of Bankruptcy Code section 364(e) in respect of the DIP Facility. Based upon the foregoing, the Debtors respectfully request that the Court approve the DIP Facility in accordance with the terms set forth in the DIP Order and the DIP Credit Agreement.

***Modification of the Automatic Stay***

34. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed DIP Order contemplates the modification of the automatic stay (to the extent applicable), to the extent necessary to permit the Debtors and DIP Lender to implement the terms of the DIP Order. Stay modification provisions of this type are standard features of postpetition debtor-in-possession financing facilities, are limited in scope, and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the DIP Order.

**CONSENT TO JURISDICTION**

35. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

**NOTICE**

36. Notice of this motion will be provided to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the DIP Agent, (d) counsel to each of the DIP Lenders; (e) counsel to Royal Bank of Canada; (f) counsel for the Junior Lien Creditors and the Junior Lien Agent; and (g) all other persons which have requested service of notices in these cases pursuant to Federal Rule of Bankruptcy Procedure 2002.

37. The Debtors respectfully submit that, under the circumstances, no further notice of this motion is necessary.

**NO PRIOR REQUEST**

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

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Order substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and such other and further relief to the Debtors as the Court may deem proper.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

Dated: July 31, 2017  
Wilmington, Delaware

**PEPPER HAMILTON LLP**

/s/ David M. Fournier  
David M. Fournier (DE 2812)  
Michael J. Custer (DE 4843)  
Hercules Plaza, Suite 5100  
1313 N. Market Street  
P.O. Box 1709  
Wilmington, Delaware 19899-1709  
Telephone: (302) 777-6500  
Facsimile: (302) 421-8390  
Email: [fournierd@pepperlaw.com](mailto:fournierd@pepperlaw.com)  
[custerm@pepperlaw.com](mailto:custerm@pepperlaw.com)

-and-

**JONES DAY**

Scott J. Greenberg  
250 Vesey Street  
New York, NY 10281-1047  
Tel: (212) 326-3939  
Fax: (212) 755-7306  
Email: [sgreenberg@jonesday.com](mailto:sgreenberg@jonesday.com)

Mark A. Cody  
77 West Wacker  
Chicago, IL 60601-1692  
Tel: (312) 782-3939  
Fax: (312) 782-8585  
Email: [macody@jonesday.com](mailto:macody@jonesday.com)

*Proposed Attorneys for Debtors  
and Debtors In Possession*

## **Exhibit A**

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

In re:	Chapter 11
GENERAL WIRELESS OPERATIONS INC. DBA RADIOSHACK <u>et al.</u> , <sup>1</sup>	Case No. 17-10506 (BLS)
Debtors.	Jointly Administered
	<b>Related to D.I. _____</b>

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY CLAIMS, AND (III) GRANTING RELATED RELIEF PURSUANT TO 11 U.S.C. §§ 105, 107, 361, 362, 363, 364 AND 507**

This matter coming before the Court on the above captioned Debtors' Motion (the "Motion") for Entry of an Order Pursuant to sections 105, 107, 361, 362, 363, 364 and 507 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (I) Authorizing the Debtors to Obtain Post-Petition Financing; (II) Granting Liens and Superpriority Claims; and (III) Granting Related Relief, seeking, among other things, the entry of an order (this "DIP Order") authorizing the Debtors to obtain post-petition financing (the "DIP Facility") from certain existing secured lenders (the "DIP Lenders") pursuant to that certain Debtor-in-Possession Credit Agreement in substantially the form attached to the Motion as Exhibit B (the "DIP Credit Agreement"), to be entered into by an among the Debtors, the DIP Lenders and Cortland Capital Market Services LLC, as agent for the DIP Lenders (solely in such capacity, together with its successors and assigns in such capacity, the "DIP Agent"), upon the record

<sup>1</sup> The Debtors in these chapter 11 cases (the "Cases") and the last four digits of each Debtor's U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

made by the Debtors at the hearing (the “Hearing”) on the Motion, and the filings and pleadings in these Cases, and good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>2</sup>:

A. Petition. On March 8, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition (each a “Petition”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D) and (M). Venue of the Cases and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. The notice given by the Debtors of the Motion, the Hearing and the relief granted pursuant to this DIP Order, constitutes appropriate, due and sufficient notice thereof, complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and no other or further notice of the relief sought at the Hearing and the relief granted herein is required.

D. Findings Regarding the DIP Facility.

---

<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rule 7052. Any statements of the Court from the bench at the Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this DIP Order to the extent not inconsistent herewith.

(i) DIP Facility. The Debtors have requested from the DIP Agent and the DIP Lenders, and the DIP Agent and the DIP Lenders are willing to extend, certain loans, advances and other financial accommodations, as more particularly described, and on the terms and conditions set forth in this DIP Order and the DIP Credit Agreement and the other Loan Documents (as defined in the DIP Credit Agreement) (collectively, the “DIP Loan Documents”).

(ii) Fair and Reasonable. Based upon the record presented to the Court by the Debtors, the terms of the DIP Credit Agreement and this DIP Order are fair and reasonable and reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(iii) Need for DIP Facility. Without the DIP Facility, there is a material risk that the Debtors will not have adequate sources of working capital to continue to operate their business and administer these chapter 11 cases. The Debtors’ ability to maintain business relationships with their customers and necessary third parties, to pay their employees, and to otherwise fund their operations is essential to the Debtors’ objective of operating their business on a going-concern basis and proposing a plan of reorganization. The ability of the Debtors to obtain sufficient working capital and liquidity through the DIP Facility on the terms set forth in the DIP Credit Agreement and this DIP Order is vital to the preservation of the going-concern value of the estates and maximizing creditor recoveries. The Debtors have an immediate need to obtain the DIP Facility under the terms set forth herein and in the DIP Credit Agreement.

(iv) No Credit Available on More Favorable Terms. The Debtors are unable to procure financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority claim pursuant to section



364(c)(1) of the Bankruptcy Code, without the grant of liens on all or substantially all of the Debtors' assets, pursuant to section 364(c) and section 364(d) of the Bankruptcy Code. The Debtors have been unable to procure the necessary financing on terms more favorable than the financing offered by the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement.

(v) Budget. From the date hereof, the Budget<sup>3</sup> for the purposes of the DIP Credit Agreement, this DIP Order and that certain Final Order (i) Authorizing Use of Cash Collateral and Affording Adequate Protection; and (ii) Modifying Automatic Stay dated April 11, 2017 (the "Final Cash Collateral Order") shall be the Budget attached hereto as Exhibit A. Any subsequent Budget shall be subject to the terms and conditions of, and shall constitute the "Budget" then in effect for purposes of, the DIP Credit Agreement, this DIP Order and the Final Cash Collateral Order. The Budget attached hereto as Exhibit A has been reviewed by the Debtors and their management and sets forth, among other things, the projected cash receipts and disbursements for the periods covered thereby. The Debtors believe in good faith that the Budget is achievable. The DIP Agent and the DIP Lenders are relying upon the Debtors' compliance with the Budget in determining to enter into the DIP Credit Agreement contemplated herein.

(vi) Business Judgment and Good Faith Pursuant to Section 364(e) and Section 363 (m). Based upon the record presented to the Court by the Debtors, the terms of the DIP Credit Agreement and this DIP Order are fair, just, reasonable and appropriate under the circumstances, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

---

<sup>3</sup> Unless otherwise defined herein, capitalized terms used herein have the meaning ascribed thereto in the Final Cash Collateral Order.

Based on the record before this Court, the Debtors, the DIP Agent and the DIP Lenders have negotiated at arms' length and in good faith regarding the terms of the DIP Credit Agreement and the terms of this DIP Order. Any credit extended under the terms of this DIP Order shall be deemed to have been extended by the DIP Agent and the DIP Lenders in "good faith," as that term is used in sections 364(e) and 363(m) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and the DIP Agent and the DIP Lenders shall be entitled to the full protection of sections 364(e) and 363(m) of the Bankruptcy Code in the event that this DIP Order or any provision hereof is vacated, revised or modified, on appeal or otherwise.

(vii) DIP Loan Obligations. The DIP Loan Obligations (as defined below) and the DIP Loan Documents constitute the legal, valid, binding and non-avoidable obligations and agreements of the Debtors, enforceable in accordance with their terms. The DIP Loan Obligations, the DIP Liens (each as defined below) and all payments made to the DIP Agent or the DIP Lenders or applied to the DIP Loan Obligations owing under the DIP Loan Documents are not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as defined in the Bankruptcy Code) of any kind, nature or description pursuant to the Bankruptcy Code or other applicable law.

(viii) No Objection. The Junior Lien Agent and Junior Lien Creditors, in their respective capacities as such, have not objected to the approval of the DIP Facility on the terms and conditions set forth in the DIP Credit Agreement and this DIP Order.

(ix) Good Cause. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interests of, and will benefit the Debtors and their estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (a) minimize disruption to the Debtors' ongoing business and ongoing operations and

to permit the Debtors to sell their assets, (b) preserve and maximize the value of the Debtors' estates and (c) avoid immediate and irreparable harm to the Debtors, their assets, business, creditors and employees.

(x) Immediate Entry. Sufficient cause exists for entry of this DIP Order pursuant to Bankruptcy Rules 4001(b) and 4001(c) and the Local Rules. Any objections to the relief sought in the Motion or the entry of this DIP Order (to the extent such objections have not been resolved or withdrawn) are hereby overruled on the merits and denied with prejudice.

E. Sections 506(c) and 552(b). In light of the DIP Agent's and the DIP Lenders' agreement to subordinate the DIP Liens and the DIP Superpriority Claim to the Carve-Out and the other terms of this DIP Order, including the provisions of the Budget, the DIP Agent and each of the DIP Lenders is entitled to the benefits of a waiver of the provisions of section 506(c) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

1. The Motion is granted on a final basis in accordance with and to the extent provided in this DIP Order.

2. The Debtors are hereby authorized and empowered to obtain post-petition financing from the DIP Agent and the DIP Lenders in an aggregate amount not to exceed \$2,000,000 (the "DIP Loans") pursuant to the terms of this DIP Order and the DIP Credit Agreement, which are hereby approved on a final basis, and to enter into and perform their

obligations under the DIP Loan Documents and such additional documents, instruments and agreements as may be reasonably required by the DIP Agent and the DIP Lenders to implement the terms or effectuate the purposes of this DIP Order and the DIP Credit Agreement. The DIP Agent and the DIP Lenders are entitled to all of the protections of section 364(e) of the Bankruptcy Code with respect to the DIP Loans.

3. To secure any and all obligations of the Debtors under the DIP Loan Documents, including, without limitation, the DIP Loans and the payment or reimbursement of the DIP Agent's and the DIP Lenders' reasonable attorneys' fees and expenses (collectively, the "DIP Loan Obligations"), the DIP Agent, for the benefit of itself and the DIP Lenders, shall have, and is hereby granted pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, effective as of the date of this DIP Order, a valid and automatically perfected lien and security interest in the Collateral (the "DIP Liens"); provided that (i) the DIP Liens shall not attach to any Avoidance Actions, but shall attach to any proceeds of Avoidance Actions, and (ii) except in the event that a landlord has specifically agreed to allow the DIP Liens to attach to such leasehold interest in real property, then "Collateral" shall not include any such leasehold interest in real property, but shall instead include all proceeds of such leasehold interest, including without limitation any proceeds from any sale, transfer or other disposition of any such lease. The DIP Liens shall be (A) junior and subordinate in all respects to, but only to, (i) the Carve-Out, and (ii) any Junior Permitted Liens, including, without limitation, the Texas Tax Lien to the extent permitted for in the Final Cash Collateral Order; and (B) senior in priority to any and all other claims, liens and security interests including, without limitation, the Junior Prepetition Liens and the Junior Loan Replacement Lien.

4. The DIP Agent and the DIP Lenders shall also have, and are hereby granted pursuant to section 364(c)(1) of the Bankruptcy Code, effective as of the date of this DIP Order, to the extent of the DIP Loan Obligations, an allowed superpriority administrative expense claim against each of the Debtors, having priority in right of payment over any and all other obligations, including, without limitation, administrative obligations (the “DIP Superpriority Claim”); provided, however, that such DIP Superpriority Claim shall be junior and subordinate in all respects to, but only to, the Carve-Out.

5. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit the Debtors to create and grant, and the DIP Agent to perfect, the DIP Liens granted hereunder. The DIP Agent shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the DIP Liens granted by this DIP Order or to take any other actions to perfect such DIP Liens, which shall be deemed automatically perfected by the docketing of this DIP Order by the Clerk of the Court, and deemed to be effective as of the time of the entry of this Final Order. If, however, the DIP Agent shall elect for any reason to file, record or serve any such financing statements or other documents with respect to such DIP Liens, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time of the entry of this Final Order.

6. The terms of the Final Cash Collateral Order shall remain in full force and effect and are not intended to be modified hereby; provided that, in addition to the termination events set forth in the Final Cash Collateral Order, the Junior Lien Agent may terminate the Debtors’ authorization to use Cash Collateral by providing written notice to the Debtors, the U.S. Trustee and counsel to the Committee of the occurrence of any Event of Default (as defined in

the DIP Credit Agreement) or the failure of any of the Debtors to perform, in any material respect, any of their respective obligations under this DIP Order or any of the DIP Loan Documents; provided, further, that for so long as the DIP Obligations remain outstanding, notwithstanding the terms of paragraph 6(e) of the Final Cash Collateral Order, any insurance proceeds, extraordinary receipts or asset disposition proceeds received by the Debtors which were not otherwise contemplated to be received under the Budget, including any net proceeds of the Sprint Litigation (as defined in the DIP Credit Agreement), shall be utilized, unless otherwise agreed by the DIP Agent (acting at the direction of the Required Lenders), to repay any outstanding amounts under the DIP Facility in accordance with the terms of the DIP Credit Agreement. Except as otherwise provided herein, the DIP Agent and the DIP Lenders shall have, on account of the DIP Loan Obligations and the Debtors' continued use of Cash Collateral, all of the same rights and protections afforded the Junior Lien Agent and the Junior Lien Creditors under the Final Cash Collateral Order. The Debtors may only use Cash Collateral and the proceeds of the DIP Facility in accordance with the Budget.

7. The rights of the Junior Lien Agent and the Junior Lien Creditors to assert a Junior Diminution in Value as a result of advances being made under the DIP Credit Agreement and senior priming liens being granted in respect thereof are fully preserved; provided, however, that nothing in this DIP Order shall constitute a finding that any such Junior Diminution in Value has occurred and the rights of the Debtors and the Creditors Committee to challenge any such Junior Diminution in Value are fully preserved.

8. The Debtors, the DIP Agent and the DIP Lenders are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any modification of the DIP Loan Documents without further order of this Court; provided that notice of any material

modification or amendment to the DIP Loan Documents shall be provided by the Debtors to the U.S. Trustee and counsel to the Committee, each of whom shall have five (5) business days from receipt of such notice within which to object in writing to such modification or amendment, unless a shorter period is agreed or such party consents to such modification or amendment before the end of such period. If either of the U.S. Trustee or the Committee timely objects to any material modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court

9. The provisions of this DIP Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in any of the Cases, (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any of the Cases or Successor Cases or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this DIP Order, as well as the DIP Superpriority Claim, the DIP Liens and all other claims and Liens granted by this DIP Order, shall (i) continue in this or any other superseding case under the Bankruptcy Code; (ii) be valid and binding on all parties in interest, including, without limitation, any official committee, chapter 11 trustee, examiner or chapter 7 trustee and (iii) continue, notwithstanding any dismissal of any Case or Successor Case (and any such order of dismissal shall so provide), and such claims and Liens shall maintain their priority as provided by this DIP Order until the DIP Loan Obligations are satisfied in full.

10. The Debtors expressly stipulate, and the Court finds and adjudicates, that none of the DIP Loan Obligations, the DIP Liens or the DIP Superpriority Claim shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding section 1141(d) of the Bankruptcy Code, unless (a) the order is entered with the prior written

consent of the DIP Agent (acting with the consent of the DIP Lenders), or (b) the DIP Superpriority Claim has been (i) paid in full in cash on or before the effective date of such plan or (ii) converted or otherwise satisfied on or before the effective date of such plan, which plan shall be acceptable to the DIP Agent and the DIP Lenders.

11. Notwithstanding the entry of any order establishing a bar date in any of these Cases, neither the DIP Agent nor any of the DIP Lenders shall be required to file requests for approval of administrative expenses in any Case or Successor Case in connection with any claims in connection with the DIP Loan Obligations.

12. Subject to the terms of the DIP Credit Agreement, the DIP Agent may use the DIP Loan Obligations to “credit bid” for the Collateral as provided for in section 363(k) of the Bankruptcy Code without the need for further Court order and regardless of whether such credit bid is effectuated pursuant to section 363(k) or section 1129(b) of the Bankruptcy Code or otherwise.

13. In no event shall the DIP Agent or the DIP Lenders be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the Collateral. The DIP Agent and the DIP Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent or the DIP Lenders with respect to proceeds, products, offspring or profits of any of the Collateral, as applicable.

14. In addition to the restrictions on the use of Cash Collateral and the Carve-Out set forth in paragraph 16(b) of the Final Cash Collateral Order, subject to the proviso thereto, neither the proceeds of the DIP Facility, nor any Cash Collateral, nor the Carve-Out may be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding,



application, motion or other litigation of any type (i) for the payment of any services rendered by the professionals retained by any Debtor or the Committee, or other representative of any estate, in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief invalidating, setting aside, avoiding or subordinating, in whole or in part, any DIP Liens or DIP Loan Obligations, or (ii) for monetary, injunctive or other affirmative relief against the DIP Agent or any of the DIP Lenders, solely in their respective capacities as an agent or lender under the DIP Credit Agreement, or (iii) preventing, hindering or otherwise delaying the valid exercise by the DIP Agent or any of the DIP Lenders of any rights under this DIP Order or the DIP Credit Agreement; (b) objecting to or challenging in any way the claims, liens or interests held by or on behalf of the DIP Agent or any of the DIP Lenders, solely in their respective capacities as an agent or lender under the DIP Credit Agreement; (c) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Agent or any of the DIP Lenders, solely in their respective capacities as an agent or lender under the DIP Credit Agreement, or with respect to the DIP Liens; or (d) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Liens or the DIP Loan Obligations, or any other rights or interest of the DIP Agent or any of the DIP Lenders, solely in their respective capacities as an agent or lender under the DIP Credit Agreement.

15. The terms and conditions of this DIP Order shall be (i) effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential

application of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise; and (ii) not be stayed absent (a) an application by a party in interest for such stay in conformance with Bankruptcy Rule 8005 and (b) a hearing upon notice to the Notice Parties.

16. Any reversal, modification, vacatur or stay of any or all of the provisions of this DIP Order shall not affect the validity or enforceability of any DIP Lien, the DIP Superpriority Claim or any claim, lien, security interest or priority authorized or created hereby with respect to any DIP Lien or the DIP Superpriority Claim incurred prior to the effective date of such reversal, modification, vacatur or stay. Notwithstanding any reversal, modification, vacatur or stay, (a) this DIP Order, together with the Final Cash Collateral Order, shall govern, in all respects, any use of Cash Collateral, DIP Lien, DIP Loan Obligation or DIP Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur or stay, and (b) the DIP Agent and the DIP Lenders shall be entitled to all the benefits and protections granted by this DIP Order with respect to any such use of Cash Collateral, DIP Lien, DIP Loan Obligations or DIP Superpriority Claim incurred by the Debtors prior to the effective date thereof.

17. The Court has and will retain jurisdiction to enforce this DIP Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this DIP Order.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

---

THE HONORABLE BRENDAN L. SHANNON  
CHIEF UNITED STATES BANKRUPTCY JUDGE

## **Exhibit B**

**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

Dated as of

August \_\_, 2017

by and among

**GENERAL WIRELESS OPERATIONS INC.,**

**GENERAL WIRELESS HOLDINGS INC.,**

**GENERAL WIRELESS INC.**

**GENERAL WIRELESS CUSTOMER SERVICE INC.**

as the Borrowers and Debtors-in-Possession,

**CORTLAND CAPITAL MARKET SERVICES LLC,**

as Agent,

and

**THE FINANCIAL INSTITUTIONS PARTY HERETO,**

as Lenders

**TABLE OF CONTENTS**

ARTICLE I THE CREDIT ..... 2

    1.1. Amounts and Terms of Commitments ..... 2

    1.2. Evidence of Loans; Notes ..... 2

    1.3. Interest, Fees and Other Amounts ..... 2

    1.4. Procedure for Borrowing ..... 3

    1.5. Payments by the Borrower ..... 3

    1.6. Disbursement of Loan Proceeds ..... 4

    1.7. Mandatory Prepayments ..... 4

    1.8. Termination Date ..... 4

ARTICLE II CONDITIONS PRECEDENT ..... 4

    2.1. Conditions of Loans ..... 4

ARTICLE III REPRESENTATIONS AND WARRANTIES ..... 6

    3.1. Corporate Existence and Power ..... 6

    3.2. Corporate Authorization; No Contravention ..... 6

    3.3. Governmental Authorization ..... 7

    3.4. Binding Effect ..... 7

    3.5. Litigation ..... 7

    3.6. Margin Regulations ..... 7

    3.7. Regulated Entities ..... 7

    3.8. Ownership of Property; Liens ..... 7

    3.9. Full Disclosure ..... 7

    3.10. Foreign Assets Control Regulations and Anti-Money Laundering ..... 8

    3.11. Patriot Act ..... 8

ARTICLE IV AFFIRMATIVE COVENANTS ..... 8

    4.1. Notices ..... 8

    4.2. Compliance with Laws ..... 8

    4.3. Use of Proceeds ..... 9

    4.4. Financing Orders ..... 9

    4.5. Adequate Protection ..... 9

    4.6. Reimbursement of Agent’s and Lenders’ Fees ..... 9

    4.7. Insurance ..... 9

    4.8. Further Assurances ..... 10

    4.9. Bankruptcy Matters ..... 10

    4.10. Other Information; Inspection of Property and Books and Records ..... 11

    4.11. Litigation Cooperation ..... 11

ARTICLE V NEGATIVE COVENANTS ..... 12

    5.1. Limitation on Liens ..... 12

    5.2. Limitation on Indebtedness and Contingent Obligations ..... 12

    5.3. Margin Stock; Use of Proceeds ..... 12

    5.4. Bankruptcy Matters ..... 12

    5.5. OFAC; Patriot Act ..... 12

ARTICLE VI SUPERPRIORITY CLAIMS, COLLATERAL SECURITY, ETC.....	13
6.1. Grant of Security.....	13
6.2. Administrative Priority .....	13
6.3. No Filings Required.....	13
6.4. Grants, Rights and Remedies.....	13
6.5. No Discharge; Survival of Claims .....	14
6.6. Prohibition on Surcharge; Etc.....	14
6.7. Marshalling Obligations.....	14
ARTICLE VII EVENTS OF DEFAULT .....	14
7.1. Events of Default .....	14
7.2. Remedies.....	16
7.3. Rights Not Exclusive .....	17
ARTICLE VIII THE ADMINISTRATIVE AGENT .....	17
8.1. Authorization and Action.....	17
8.2. Agent Individually .....	18
8.3. Duties of Agents: Exculpatory Provisions.....	18
8.4. Reliance by Agent.....	19
8.5. Delegation of Duties .....	19
8.6. Resignation of Agents.....	19
8.7. Non-Reliance on Agents and Other Lenders .....	20
8.8. Indemnification .....	21
ARTICLE IX MISCELLANEOUS .....	21
9.1. Amendments and Waivers .....	21
9.2. Notices .....	22
9.3. No Waiver; Cumulative Remedies .....	22
9.4. Costs and Expenses; Yield Protection; Indemnity etc.....	22
9.5. Marshalling; Payments Set Aside.....	24
9.6. Successors and Assigns.....	24
9.7. Binding Effect.....	25
9.8. Counterparts; Facsimile Signature.....	25
9.9. Severability .....	25
9.10. Captions .....	25
9.11. Independence of Provisions .....	25
9.12. Interpretation.....	25
9.13. No Third Parties Benefited .....	25
9.14. Governing Law and Jurisdiction.....	26
9.15. Waiver of Jury Trial.....	27
9.16. Entire Agreement; Release; Survival.....	27
9.17. Patriot Act .....	28
9.18. Joint and Several.....	28
ARTICLE X DEFINITIONS.....	28
10.1. Defined Terms .....	28
10.2. Other Interpretive Provisions.....	34

10.3. Accounting Terms and Principles..... 35

**SCHEDULES**

Schedule 1.1 (a)(i) Term Loan Commitments

**EXHIBITS**

Exhibit A Form of Term Note  
Exhibit B Form of Notice of Borrowing  
Exhibit C Form of DIP Order



## DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (including all exhibits and schedules hereto, as the same may be amended, modified and/or restated from time to time, this “Agreement”) is entered into as of August \_\_, 2017, by and among GENERAL WIRELESS OPERATIONS INC., GENERAL WIRELESS HOLDINGS INC., GENERAL WIRELESS INC. and GENERAL WIRELESS CUSTOMER SERVICE INC., each a Delaware corporation and a debtor and debtor-in-possession (collectively, the “Borrowers” or “Debtors” and each a “Borrower” or “Debtor”), CORTLAND CAPITAL MARKET SERVICES LLC, a Delaware limited liability company, as agent for the Lenders (solely in such capacity, together with its successors and assigns in such capacity, the “Agent”), and the financial institutions from time to time party hereto, as lenders (collectively, the “Lenders” and individually each a “Lender”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Final Cash Collateral Order.

### WITNESSETH:

WHEREAS, on March 8, 2017 (the “Petition Date”), the Borrowers each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, which cases are being jointly administered as Bankruptcy Case No. 17-10506 (BLS) (the “Cases”) before the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors remain in possession of their assets and are operating their businesses as debtors-in-possession under Chapter 11 of the Bankruptcy Code;

WHEREAS, the Borrowers have a need for additional liquidity and have requested that the Lenders make advances and other financial accommodations available to the Borrowers of up to \$2.0 million dollars on a senior secured and superpriority basis (subject to the limitations described herein), pursuant to, inter alia, Section 364(c) and (d) of the Bankruptcy Code to be used for the purposes specified herein, and in accordance with the terms hereof; and

WHEREAS, the Lenders are willing to provide advances and other financial accommodations to the Borrowers on the terms and subject to the conditions of this Agreement, so long as such post-petition credit obligations are (i) secured by Liens on all of the assets, property and interests, real and personal, tangible and intangible, of the Borrowers, whether now owned or hereafter acquired, which Liens are superior to all other Liens (other than the Junior Permitted Liens) pursuant to Sections 364(c) and (d) of the Bankruptcy Code (collectively, the “DIP Liens”); and (ii) given priority pursuant to Section 364(c)(1) of the Bankruptcy Code over any or all administrative expenses of the kind specified in the Bankruptcy Code, including without limitation, under Sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c), 507, 546, 726, 1113 or 1114 of the Bankruptcy Code, subject, as to priority, only to the Carve-Out, as provided in the DIP Order.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the mutual agreements, provisions and covenants contained herein, the Borrowers (acting for themselves and as debtors-in possession) and the Lenders hereby agree as follows:

ARTICLE I  
THE CREDIT

1.1. Amounts and Terms of Commitments.

(a) Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Borrowers contained herein, each Lender severally and not jointly agrees to make available to the Borrowers a multi-draw term loan facility in the amount set forth opposite such Lender's name in Schedule 1.1(a)(i) under the heading "Term Loan Commitments" (such amount being referred to herein as such Lender's "Term Loan Commitment"). Subject to the entry of the DIP Order, on the terms described herein and therein, up to two million dollars (\$2,000,000) shall be advanced as term loans hereunder. Amounts borrowed under this subsection 1.1(a) are referred to as "Loans."

(b) Amounts borrowed as a Loan which are repaid or prepaid may not be reborrowed.

(c) The Borrowers may reduce (on a ratable basis) the Commitments of the Lenders hereunder at any time on notice to the Agent and the Lenders, and the Commitments shall also be reduced (on a ratable basis) as provided in Section 7.2 hereof.

1.2. Evidence of Loans; Notes. The Loans made by each Lender with a Term Loan Commitment is evidenced by this Agreement and, if requested by such Lender, a Term Note (in the form attached hereto as Exhibit A) payable to such Lender in an amount equal to the unpaid principal balance of the Loans held by such Lender.

1.3. Interest, Fees and Other Amounts.

(a) Each Loan shall bear interest on the outstanding principal amount thereof from the date when made at a rate per annum equal to LIBOR plus 10.00% (the "Applicable Margin"). Accrued interest on each Loan shall be payable in cash (i) monthly, in arrears, on the last day of each calendar month, (ii) at maturity (whether by acceleration or otherwise) and (iii) upon the payment or prepayment of any principal amount of the Loans.

(b) The Borrowers shall pay to the Agent for its own account the fees provided for in the Agent's Fee Letter. From the proceeds of the initial Borrowing hereunder, the Lender's shall retain a closing payment equal to 3% times such Lender's Term Loan Commitment as of the date hereof. The Borrower shall pay to each Lender at the end of each month an amount equal to 1 1/2% (on an annualized basis) times such Lender's average unused Term Loan Commitment during such month.

(c) All computations of fees, interest and other amounts payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest, fees and other amounts, as applicable, shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(d) At the election of the Lenders while any Event of Default exists, the Borrower shall pay interest (after as well as before entry of judgment thereon to the extent

permitted by law) on the Loans and other Obligations under the Loan Documents from and after the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.00%) per annum to the Applicable Margin then in effect for such Loans (plus LIBOR) or the rate (if any) then in effect for such other Obligations. All such interest shall be payable on demand of the Lenders.

1.4. Procedure for Borrowing.

(a) Each Borrowing of a Loan, both in terms of timing, use and amount, shall occur at Borrowers' request, but subject to, and based upon advances scheduled to be made by the Lenders pursuant to, and in accordance with the Budget. Borrowers shall request a Borrowing by written notice delivered to the Agent substantially in the form of a Notice of Borrowing attached hereto as Exhibit B, or in writing in any other form acceptable to Agent, which notice must be received prior to 1:00 p.m. (New York time) on the date which is three (3) Business Days prior to the requested Borrowing date. The Borrowers shall be limited to no more than one Borrowing during any two-week period, and no Borrowing shall be in an amount greater than \$1,000,000. Such Notice of Borrowing shall specify:

- (i) the amount of the Borrowing; and
- (ii) the requested Borrowing date, which shall be a Business Day.

(b) The proceeds of each requested Borrowing will be made available to the Borrowers by Lenders pro rata based upon their Term Loan Commitments.

(c) The Borrowers shall not request more than four (4) Borrowings, and the Borrowers shall only request a Borrowing to the extent they reasonably determine that the amount of such Borrowing is necessary to satisfy amounts due and payable within thirty (30) days of such Borrowing in accordance with the Budget. Any Notice of Borrower shall constitute a certification by the Borrowers with respect to the preceding sentence.

1.5. Payments by the Borrower.

(a) The Loans shall be repaid based upon the schedule set forth in the Budget, if any. To the extent not otherwise repaid, the aggregate outstanding principal amount of the Loans, plus accrued and unpaid interest thereon, shall be repaid in full on the earlier of (i) an Acceleration; or (ii) the Maturity Date.

(b) All payments (including prepayments) to be made by the Borrowers on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment, counterclaim or deduction of any kind and shall be free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings (other than taxes that are imposed on such Lender's overall net income), shall, except as otherwise expressly provided herein, be made to the Agent (for the ratable account of the Persons entitled thereto) at the address for payment (or account information) specified in the signature page hereof in relation to Agent (or such other address (or account information) as Agent may from time to time specify in accordance with Section 9.2), including payments

utilizing the ACH system, and shall be made in Dollars and in immediately available funds, no later than 2:00 p.m. (New York time) on the date due.

(c) If any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

1.6. Disbursement of Loan Proceeds. Each Lender shall disburse funds into such account as is designated by the Borrowers for Borrowings requested.

1.7. Mandatory Prepayments. The Agent may require the Debtors on written notice to repay the Obligations with the net proceeds of any insurance proceeds, extraordinary receipts or asset disposition received by the Debtors which were not otherwise contemplated to be received under the Budget, including, but subject to the Plan Support Agreement, any net proceeds of the Sprint Litigation.

1.8. Termination Date. The Term Loan Commitments shall terminate upon the earlier of (A) an Acceleration, (B) the Maturity Date; or (C) the termination of the Commitments in accordance with Section 7.2(a) hereof.

## ARTICLE II CONDITIONS PRECEDENT

2.1. Conditions of Loans. The effectiveness of this Agreement and the obligation of each Lender to advance any Loan hereunder is subject to satisfaction or waiver of the following conditions, each as of the date of such Borrowing, in a manner satisfactory to Lenders:

(a) Loan Documents. Lenders shall have received an executed counterpart of this Agreement in form and substance reasonably satisfactory to Lenders.

(b) DIP Order. Lenders shall have received satisfactory evidence of the entry of the DIP Order, which (i) shall have been entered upon an application or motion of the Borrowers' reasonably satisfactory in form and substance to Lenders, and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by Lenders; (ii) any objection to entry of the DIP Order shall have been withdrawn or overruled on the merits and denied with prejudice and (iii) shall be in full force and effect and shall not have been materially amended or modified without the consent of the Lenders, or stayed, vacated or reversed; and, if the DIP Order is the subject of a pending appeal or motion for reconsideration in any respect, neither the DIP Order, nor the making of the advances or the performance of the Borrowers or the Lenders of their respective obligations hereunder, shall be the subject of a presently effective stay. The Lenders shall be entitled to rely in good faith upon the DIP Order notwithstanding any such appeal or motion for reconsideration.

(c) Payment of Expenses. Borrower shall have reimbursed Agent and Lenders for all due and owing fees, costs and expenses (to the extent invoiced) required to be paid by the Borrowers pursuant to the Loan Documents.

(d) Bankruptcy Cases. No trustee or examiner shall have been appointed with respect to any Borrower or any property of or any estate of any Borrower.

(e) Budget. The Agent shall have received, and the Lenders shall have approved, the Budget, and the Borrowers shall be in compliance with the Budget, subject to any permitted variances set forth in the Final Cash Collateral Order.

(f) Litigation. Other than the Cases, there shall be no order or injunction or pending litigation that is not stayed in which there is a reasonable possibility of a decision that would have a Material Adverse Effect and no pending litigation seeking to enjoin or present the transactions contemplated hereby.

(g) Secretary's Certificates. The Agent shall have received customary secretary's certificates for each Borrower attaching (i) articles of incorporation or organization or other similar document for such Borrower, certified as of a recent date by the applicable governmental authority, (ii) the bylaws or operating agreement for such Borrower, (iii) the resolutions of such Borrower's board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance the Loan Documents and (d) incumbency specimens.

(h) Final Cash Collateral Order; First Lien Settlement. The Final Cash Collateral Order and the Bankruptcy Court's Order Approving Amended Stipulation Regarding Senior Challenge entered in the Cases on July 19, 2017(Docket No. 824) shall each be in full force and effect and shall not have been materially amended or modified without the consent of the Lenders, or stayed, vacated or reversed or subject to a pending appeal or motion for reconsideration.

(i) Plan Support Agreement. A plan support agreement reasonably satisfactory in form and substance to the Lenders (the "Plan Support Agreement") shall have been executed by the Junior Lien Creditors, DIP Agent, DIP Lenders, Borrowers and the Creditors' Committee.

(j) UnitedHealthcare. The Lenders shall be satisfied in their sole and absolute discretion with the status of all outstanding disputes and monetary obligations between the Borrowers, on the one hand, and UnitedHealthcare Insurance Company, on the other.

(k) Other Information. The Agent and Lenders shall have received and be satisfied with such other information (financial or otherwise) with respect to the Borrowers or the Cases reasonably requested by Agent or Lenders, as applicable.

(l) Representations and Warranties. Any representation or warranty by any Borrower contained herein or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the date of such Borrowing, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representation or warranty shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

(m) No Default. No Default or Event of Default shall have occurred or shall be continuing or would result after giving effect to any Loans.

The request by the Borrowers and acceptance by the Borrowers of the proceeds of any Loan shall be deemed to constitute, as of the date thereof and the date of such Borrowing, a representation and warranty by the Borrowers that the conditions in this Section 2.1 have been satisfied.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrowers, jointly and severally, represent and warrant to each Lender that the following are, and after giving effect to the funding of any Loan will be, true, correct and complete:

3.1. Corporate Existence and Power. Each Borrower:

(a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable;

(b) has the power and authority and all governmental licenses, authorizations, Permits, consents and approvals to own its assets, carry on its business and, following entry of the DIP Order, to execute, deliver, and perform its obligations under the Loan Documents to which it is a party;

(c) is duly qualified and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and

(d) is in compliance with all Requirements of Law.

3.2. Corporate Authorization; No Contravention. Following the entry of the DIP Order, the execution, delivery and performance by each of the Borrowers of this Agreement and each other Loan Document shall have been duly authorized by all necessary action, and do not and will not:

(a) contravene the terms of any of that Borrower's Organization Documents;

(b) other than as a result of the commencement of the Cases, conflict with or result in any breach or contravention of, or result in the creation of any Lien under, any document evidencing any contractual obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject;

(c) require any Consent to be obtained, which has not already been authorized pursuant to an order of the Bankruptcy Court or obtained prior to the execution, delivery or performance of the terms of this Agreement; or

(d) violate any Requirement of Law in any material respect.

3.3. Governmental Authorization. Following the entry of the DIP Order, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Borrower, or any Subsidiary of any Borrower, of this Agreement or any other Loan Document except (a) for recordings and filings in connection with the Liens granted to Agent under the Collateral Documents and (b) those obtained or made on or prior to the date hereof.

3.4. Binding Effect. Following the entry of the DIP Order, this Agreement and each other Loan Document shall constitute the legal, valid and binding obligations of each such Borrower which is a party thereto, enforceable against such Borrower in accordance with their respective terms, except as enforceability may be limited by equitable principles relating to enforceability.

3.5. Litigation. Except for audits conducted by the IRS and other taxing authorities and any related actions, suits, proceedings, claims or disputes, or claims and disputes arising in connection with the Cases, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Borrower, any Subsidiary of any Borrower or any of their respective Properties which purport to affect or pertain to this Agreement, any other Loan Document, or any of the transactions contemplated hereby or thereby.

3.6. Margin Regulations. No Borrower and no Subsidiary of any Borrower is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

3.7. Regulated Entities. None of the Borrowers, any Person controlling any Borrower, or any Subsidiary of any Borrower, is (a) an “investment company” within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its Obligations under the Loan Documents.

3.8. Ownership of Property; Liens. Each Borrower has good and valid title to the Collateral as is necessary or used in the ordinary conduct of their respective businesses.

3.9. Full Disclosure. None of the representations or warranties made by any Borrower in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Borrower in connection with the Loan Documents (including the offering and disclosure materials, if any, delivered by or on behalf of any Borrower to Agent or the Lenders prior to the date hereof), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when

made or delivered; provided that with respect to projections, the Borrowers represent only that such projections were prepared in good faith based upon estimates, information and assumptions believed to be reasonable.

3.10. Foreign Assets Control Regulations and Anti-Money Laundering. Each Borrower and each Subsidiary of each Borrower is and will remain in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Borrower and no Subsidiary or affiliate of a Borrower (i) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

3.11. Patriot Act. The Borrowers, each of their Subsidiaries and each of their affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal or state laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

#### ARTICLE IV AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan shall remain unpaid, unsatisfied or outstanding:

4.1. Notices. The Borrowers shall notify promptly the Agent and each Lender following (and in no event later than three (3) Business Days after a Responsible Officer becomes aware thereof) the occurrence or existence of any Default, Event of Default or Material Adverse Effect.

4.2. Compliance with Laws. Each Borrower shall comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.



4.3. Use of Proceeds. The Borrower shall use the proceeds of the Loans solely in accordance with the Budget, the DIP Order and the Final Cash Collateral Order.

4.4. Financing Orders. The Borrowers shall comply with the DIP Order and the Final Cash Collateral Order, as then in effect, in all respects.

4.5. Adequate Protection. The Junior Lien Creditors shall retain, as adequate protection for use of their Cash Collateral pursuant to Section 363 of the Bankruptcy Code, the Junior Loan Replacement Lien, the Junior Loan Adequate Protection Superpriority Claim and such other rights accorded to the Junior Lien Creditors under the Final Cash Collateral Order.

4.6. Reimbursement of Agent's and Lenders' Fees. The Borrowers shall reimburse Agent and Lenders for their reasonable and documented Attorney Costs relating to the preparation, approval, administration and enforcement of the Agreement.

4.7. Insurance.

(a) Except as otherwise agreed by Agent, each Borrower shall (i) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the Property and businesses of the Borrowers and such Subsidiaries (including policies of life, fire, theft, product liability, public liability, Flood Insurance, property damage, other casualty, employee fidelity, workers' compensation, business interruption (or insurance on the retail value of inventory) and employee health and welfare insurance) with financially sound and reputable insurance companies or associations (in each case that are not affiliates of any Borrower) of a nature and providing such coverage as is sufficient and as is customarily carried by businesses of the size and character of the business of the Borrowers and (ii) cause all such insurance relating to any Property or business of any Borrower to name Agent as additional insured or lenders loss payee, as agent for the Lenders, as appropriate. All policies of insurance on real and personal property of the Borrowers will contain an endorsement, in form and substance acceptable to Agent, showing loss payable to Agent (Form CP 1218 or equivalent and naming Agent as lenders loss payee as agent for the Lenders) and, to the extent applicable, business interruption endorsements and such other provisions as the Agent may reasonably require from time to time to protect the interests of the Borrowers. Such endorsement, or an independent instrument furnished to Agent, will provide that the insurance companies will give Agent at least thirty (30) days' prior written notice before any such policy or policies of insurance shall be altered or canceled and that no act or default of the Borrowers or any other Person shall affect the right of Agent to recover under such policy or policies of insurance in case of loss or damage. Each Borrower shall direct all present and future insurers under its "All Risk" policies of property insurance to pay all proceeds payable thereunder directly to Agent for the benefit of the Lenders. If any insurance proceeds are paid by check, draft or other instrument payable to any Borrower and Agent jointly, Agent may endorse such Borrower's name thereon and do such other things as Agent may deem advisable to reduce the same to cash. Notwithstanding the requirement in subsection (i) above, Federal Flood Insurance shall not be required for (x) Real Estate, if any, not located in a Special Flood Hazard Area, or (y) Real Estate, if any, located in a Special Flood Hazard Area in a community that does not participate in the National Flood Insurance Program.

(b) Unless the Borrowers provide Agent with evidence of the insurance coverage required by this Agreement, Agent, at the direction of the Lenders, may purchase insurance at the Borrowers' expense to protect Agent's and Lenders' interests in the Borrowers' properties. If Agent purchases insurance, the Borrowers will be responsible for the costs of that insurance, including interest and any other charges Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance the Borrowers may be able to obtain on their own.

4.8. Further Assurances.

(a) Each Borrower will promptly disclose to Agent and the Lenders and correct any defect or error that may be discovered in any Loan Document, any written information, exhibits and reports furnished to Agent or the Lenders or in the execution, acknowledgement or recordation thereof.

(b) Without any further order of the Bankruptcy Court, promptly upon request by Agent (and Agent shall make such request upon the direction of the Lenders), the Borrowers shall take such additional actions and execute such documents as Agent or the Lenders may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents all of the Properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Agent and the Lenders the rights granted or now or hereafter intended to be granted to the Agent or the Lenders under any Loan Document.

4.9. Bankruptcy Matters.

(a) The Borrowers shall cause to occur or comply, as applicable, with each of the following (collectively, the "Milestones"):

(i) The DIP Order shall have been entered by August 18, 2017;

(ii) The Borrowers shall have filed a plan of reorganization or liquidation reasonably acceptable to the Lenders and otherwise consistent with the Plan Support Agreement (an "Acceptable Plan") by no later than August 31, 2017 and shall use commercially reasonable efforts to cause the Bankruptcy Court to confirm the Acceptable Plan no later than October 31, 2017.

(b) The Borrowers shall comply with the terms of the Plan Support Agreement.

(c) The Borrower shall deliver to Agent and Lenders (i) as soon as practicable in advance of filing with the Bankruptcy Court the proposed DIP Order and pleadings proposed to be filed seeking approval of the Loans (which, in each case, must be in form and substance reasonably satisfactory to the Agent and the Lenders prior to being filed), any other material

filings proposed to be filed in the Cases, any plan of reorganization or liquidation, and any disclosure statement related to such plan; (ii) contemporaneously with delivery thereof to the Creditors' Committee or any other official or unofficial creditors' committee in the Cases, copies of all material written reports and all term sheets for a plan of reorganization or liquidation or any sale under Section 363 of the Bankruptcy Code, with copies of such reports and term sheets also provided to or served on Agent's and each Lender's counsel; and (iii) access to information (including historical information) and personnel, including, without limitation, regularly scheduled meetings as mutually agreed with senior management and the chief financial officer, or such other officer of each Borrower with similar responsibility, and other company advisors, which meetings shall include reports with respect to asset sales, store closures and other matters reasonably requested by the Lenders.

4.10. Other Information; Inspection of Property and Books and Records.

(a) Each Borrower shall promptly forward or make available to the Agent and the Lenders any such business, financial, corporate affairs, perfection certificate and other information regarding the Borrowers (including, without limitation, Collateral reports) as the Agent or any Lender may from time to time reasonably request.

(b) Each Borrower shall maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Person. Each Borrower shall, with respect to each owned, leased or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent shall have access at any and all times during the continuance thereof): (a) provide access to such property to Agent, the Lenders and any of their respective employees or representatives, as frequently as such party reasonably determines to be appropriate; and (b) permit Agent, the Lenders and any of their respective employees or representatives to conduct field examinations, audit, inspect and make extracts and copies from all of such Borrower's books and records, and evaluate and make physical verifications of the inventory and other Collateral in any manner and through any medium that such party considers advisable, in each instance, at the Borrowers' expense; provided the Borrowers shall only be obligated to reimburse such party for the expenses for two such field examination, audit and inspection per year.

4.11. Litigation Cooperation. The Borrowers shall make reasonably available to the Agent and the Lenders, at the Borrowers' expense and promptly upon request, any Borrower and its officers, employees and agents and each Borrower's books of record and account, to prosecute or defend any third-party suit or proceeding instituted or threatened by or against the Agent or the Lenders with respect to any Collateral, relating to any Borrower or in connection with the Cases, including the Sprint Litigation.

ARTICLE V  
NEGATIVE COVENANTS

Each Borrower covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan shall remain unpaid, unsatisfied or outstanding:

5.1. Limitation on Liens. Except as provided in the DIP Order or the Final Cash Collateral Order, no Borrower shall, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired which did not exist as of the date of this Agreement.

5.2. Limitation on Indebtedness and Contingent Obligations. No Borrower shall create, incur, assume, permit to exist or otherwise become or remain directly or indirectly liable with respect to, any indebtedness or Contingent Obligations, except for (a) the Obligations, (b) indebtedness incurred in accordance with the Budget, (c) indebtedness consented to in writing by the Agent and (d) any indebtedness or Contingent Obligations in existence on the date hereof.

5.3. Margin Stock; Use of Proceeds. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, use any portion of the Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Borrower or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of any Loan Document.

5.4. Bankruptcy Matters.

(a) No Borrower shall directly or indirectly, seek, consent to, incur, assume, create, permit or suffer to exist (i) any material modification or amendment or stay or vacation to the DIP Order or the Final Cash Collateral Order, unless the Agent and the Lenders have consented to such modification, stay, vacation or amendment in writing; (ii) entry of any material order impacting this financing or the Collateral in the Cases that is not, in form and substance, reasonably satisfactory to Agent and the Lenders; (iii) a claim for any administrative expense or unsecured claim which is pari passu with or senior to the Superpriority Claim of the Agent and the Lenders in respect of the Obligations, except for the Carve-Out; or (iv) any Lien on any Collateral having a priority equal or senior to the Liens in favor of the Agent and the Lenders in respect of the Obligations (subject to the Carve-Out and Junior Permitted Liens).

(b) No Borrower shall make any expenditure except of the type and for the purposes and in the amounts provided for in the Budget and subject to the variances provided herein.

5.5. OFAC; Patriot Act. No Borrower shall fail to comply with the laws, regulations and executive orders referred to in Section 3.10.

ARTICLE VI  
SUPERPRIORITY CLAIMS, COLLATERAL SECURITY, ETC.

6.1. Grant of Security. To secure the prompt payment and performance of any and all obligations hereunder and under the Loans, each Borrower hereby pledges, assigns and grants to Agent, for the benefit of the Lenders, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, effective as of the date of the DIP Order, a valid and automatically perfected lien and security interest in the Collateral; provided that (i) such liens shall not attach to any Avoidance Actions, but shall attach to any proceeds of Avoidance Actions and (ii) except in the event that a landlord has specifically agreed to allow the DIP Liens to attach to such leasehold interest in real property, “Collateral” shall not include any such leasehold interest in real property, but shall instead include all proceeds of such leasehold interest, including without limitation any proceeds from any sale, transfer or other disposition of any such lease. The liens granted herein shall be (a) junior and subordinate in all respects to, but only to, (i) the Carve-Out, (ii) any Junior Permitted Liens, including, without limitation, the Texas Tax Lien, to the extent provided in the Final Cash Collateral Order; and (b) senior in priority to any and all other claims, liens and security interests including, without limitation, the Junior Prepetition Liens and the Junior Loan Replacement Lien.

6.2. Administrative Priority. Each Borrower agrees that all Obligations hereunder shall constitute an allowed Superpriority Claim against it, pursuant to Section 364(c)(1) of the Bankruptcy Code; provided, however, that such Superpriority Claims shall be junior and subordinate in all respects to, but only to, the Carve-Out.

6.3. No Filings Required. The Liens securing the Obligations shall be deemed valid and perfected and duly recorded by entry of the DIP Order. Lenders shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien granted by or pursuant to the DIP Order or this Agreement.

6.4. Grants, Rights and Remedies.

(a) The Lien and Superpriority Claim granted by or pursuant to the DIP Order, this Agreement or any other Loan Document are independently granted. The DIP Order, this Agreement and each other Loan Documents supplement each other, and the grants, priorities, rights and remedies of Agent and Lenders hereunder and thereunder are cumulative; provided, however, that in the event of a conflict between the DIP Order and any Loan Document, the DIP Order shall control. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, but subject to Section 7.2 and the DIP Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Lenders (or the Agent on behalf of the Lenders) shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, without further application to or order by the Bankruptcy Court.

(b) The agreement of the Agent and the Lenders to provide post-petition financing to the Borrowers will not prohibit Agent or Lenders from moving the Bankruptcy Court for any other further relief which Agent or Lenders believe in good faith to be reasonably

and immediately necessary to protect their rights with respect to the Collateral (including a request for the Borrowers to abandon any part of the Collateral) or otherwise.

6.5. No Discharge; Survival of Claims. Each Borrower agrees that (a) the Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation and hereby waives any such discharge, unless all commitments of the Lenders to make Loans hereunder have been terminated and the Obligations have been indefeasibly paid in full, in cash, or otherwise satisfied on or before the effective date of such plan, and (b) it shall not propose or support any plan of reorganization or liquidation that is not conditioned upon termination of all Commitments of the Lenders to make Loans hereunder, the indefeasible payment in full, in cash, or other satisfaction acceptable to the Lenders, of all Obligations, and the release of the Agent and the Lenders in full from all claims of the Borrowers and their estates, in each case, as of the effective date of such plan.

6.6. Prohibition on Surcharge; Etc. No Person will be permitted to surcharge the Collateral under Section 506(c) of the Bankruptcy Code, nor shall any costs or expenses whatsoever be imposed against the Collateral, except for the Carve-Out. Upon the termination of this Agreement and the dismissal of the Cases, the Bankruptcy Court will retain jurisdiction over the Collateral for the purpose of enforcing this Article VI.

6.7. Marshalling Obligations. The Lenders shall not be subject to any equitable remedy of marshalling. The Lenders shall be entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code and the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the Lenders with respect to the proceeds, products, offspring or profits of any of the Collateral.

## ARTICLE VII EVENTS OF DEFAULT

7.1. Events of Default. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. Any Borrower fails to pay when and as required to be paid herein, any amount of any Loan within three (3) Business Days from the date that such amount has become due;

(b) Representation or Warranty. Any representation, warranty or certification by or on behalf of any Borrower made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any such Person, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any other Loan Document, shall prove to have been incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made.

(c) Specific Defaults. Any Borrower (i) fails to perform or observe any term, covenant or agreement contained in Article V of this Agreement or (ii) fails to perform any other term, covenant or agreement contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of ten (10) days after the earlier to occur of (i) the date upon which a Responsible Officer of any Borrower becomes aware of such default and (ii)

the date upon which written notice thereof is given to the Borrowers by Lenders, at the direction of the Lenders;

(d) Bankruptcy Defaults. The occurrence of any of the following in the Cases:

(i) the DIP Order is not entered by August 18, 2017;

(ii) other than as contemplated by the Plan Support Agreement or in connection with the payment in full or other satisfaction or refinancing of the Obligations, the filing of any motion, taking of any action or the filing of any reorganization or liquidation plan or disclosure statement in the Cases by any Borrower (A) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code that is senior to or *pari passu* with the financing provided under this Agreement or the Junior Prepetition Obligations or the Junior Loan Adequate Protection Superpriority Claim, (B) to grant any Lien upon or affecting any Collateral that is senior to or *pari passu* with the DIP Liens granted under this Agreement, the Junior Prepetition Liens or the Junior Loan Replacement Lien, (C) except as provided in the Final Cash Collateral Order and the DIP Order, to use cash collateral under Section 363(c) of the Bankruptcy Code without prior written consent of the Lenders, (D) that seeks to prohibit the Lenders from credit bidding on any or all of the Borrowers' assets during the pendency of the Cases or (E) that is otherwise materially adverse to the rights and remedies granted to the Agent or the Lenders hereunder or under the DIP Order;

(iii) this Agreement, any of the other Loan Documents, the DIP Order or the Final Cash Collateral Order for any reason ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction, or any of the Borrowers shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such Borrower or such Person) any other Person's motion to, disallow in whole or in part the Agent's or the Lenders' claims in respect of the Obligations or to challenge the validity of any portion of the Loan Documents, the Loans, the Junior Loan Credit Documents, the Junior Loan Replacement Lien and the related obligations or the applicability or enforceability of same or which seeks to void, limit, subordinate or otherwise adversely affect any Liens in favor of any of the Agent or Lenders (or the Junior Lien Creditors, as applicable) or any payment pursuant to the Loan Documents, the Junior Loan Credit Documents, the DIP Order or the Final Cash Collateral Order;

(iv) any Lien or security interest purported to be created under the Collateral Documents shall cease to be, or shall be asserted by any Borrower not to be, a valid and perfected Lien on or security interest in any of the Collateral, with the priority set forth herein and in the related Collateral Documents;

(v) the Bankruptcy Court shall enter one or more orders granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any one or more creditors to execute upon or enforce liens on or security interests in any Collateral that individually or cumulatively has an aggregate fair market value in excess of \$150,000 (subject to customary exceptions and other exceptions to be agreed upon, including, without limitation,

exceptions for enforcement of rights with respect to Cash Collateral supporting letters of credit, professional fees, utility obligations and insurance programs);

(vi) the Bankruptcy Court shall enter any order revoking, reversing, staying, vacating, rescinding, or materially modifying, supplementing or amending in each case, without the consent of the Lenders, the DIP Order or the Final Cash Collateral Order;

(vii) any application for any of the orders described in clauses (ii), (iii), (iv), (v) or (vi) above or (viii) or (ix) below shall be made and, if made by a Person other than a Borrower, such application is not being diligently contested by the Borrowers in good faith;

(viii) the Bankruptcy Court shall enter any order (which has not been reversed or vacated within five (5) calendar days) : (a) appointing a Chapter 11 trustee under Section 1104 of the Bankruptcy Code in the Cases, (b) appointing an 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 in the Cases or otherwise or (c) dismissing the Cases or converting the Cases to a Chapter 7 case;

(ix) except as contemplated by the Plan Support Agreement, if a plan of reorganization or liquidation is filed by the Borrowers in the Cases, or an order shall be entered by the Bankruptcy Court confirming any plan in the Cases, that does not provide for (I)(A) the indefeasible payment in full in cash of all Obligations (or other treatment acceptable to the Lenders) and (B) the release of the Agent and the Lenders (in their respective capacities as such) in full from all claims of the Borrowers and their estates, in each case on or before the effective date of such plan, and (II) the continuation of the Liens and security interests granted to the Lenders until the effective date of such plan;

(x) the occurrence of the Termination Date under and as defined in the Final Cash Collateral Order;

(xi) a breach of the terms of the Plan Support Agreement by any Borrower or the Creditors' Committee, subject to any applicable grace period set forth therein; and

(xii) a breach of the terms or provisions of the DIP Order or, following the entry of the DIP Order, the Final Cash Collateral Order.

(e) Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Borrower party thereto or any Borrower shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document (together with the DIP Order and the Final Cash Collateral Order) shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to the Carve-Out and Junior Permitted Liens.

7.2. Remedies. On not less than five (5) Business Days' prior written notice by the Agent to counsel for the Borrowers, the Office of the United States Trustee and counsel to the



Creditors' Committee of the occurrence and continuance of an Event of Default and without any further order of the Bankruptcy Court, the Lenders may:

(a) Declare, on a pro rata basis, all or any portion of the Commitments of the Lenders to make Loans to be suspended or terminated, whereupon such Commitments shall forthwith be suspended or terminated;

(b) declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Documents to be immediately due and payable (such event being referred to herein as an "Acceleration") without presentment, demand, protest or (except as provided above) other notice of any kind, all of which are hereby expressly waived by each Borrower;

(c) terminate any Borrower's ability (i) to access the Loans and (ii) to use the cash collateral provided for by the DIP Order, but subject to the Carve-Out; and/or

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents, the DIP Order, or applicable law, in each case, without further order of or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Sections 362 or 105 of the Bankruptcy Code.

The Borrowers shall not seek to enjoin, hinder, delay or object to the Agent's exercise of rights and remedies in accordance with this Agreement, and at any proceeding with respect to the Agent's exercise of rights and remedies, the Borrowers cannot raise any substantive objections, other than to challenge the occurrence of the relevant Event of Default.

7.3. Rights Not Exclusive. The rights provided for in this Agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

## ARTICLE VIII THE ADMINISTRATIVE AGENT

### 8.1. Authorization and Action.

(a) Each Lender hereby appoints Cortland Market Services LLC to act as Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Borrowers nor any other Person shall have rights as a third party beneficiary of any of such provisions.

8.2. Agent Individually.

(a) Any Person serving as an Agent hereunder who is also a Lender shall have the same rights and powers in its capacity as a Lender and may exercise the same as though it were not an Agent. Each such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or an Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender acknowledges that the Agent and its Affiliates are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 8.2 as “Activities”) and may engage in the Activities with or on behalf of one or more of the Borrowers or their respective Affiliates. The Lenders acknowledge that, pursuant to such activities, the Agent or its Affiliates may receive information regarding any Borrower or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Borrower or such Affiliate) and acknowledge that the Agent shall not be under any obligation to provide such information to them.

8.3. Duties of Agents: Exculpatory Provisions.

(a) The Agent’s duties hereunder and under the other Loan Documents are solely mechanical and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise upon the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it or any of its Affiliates to liability or that is contrary to any Loan Documents or applicable law; and

(iii) except as expressly set forth herein and in the other Loan Documents, shall not have any duty to disclose or be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by such Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.1 or elsewhere herein) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment, in connection with its duties expressly

set forth herein. The Agent shall not be deemed to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until notice describing such Default and such event or events is given to the Agent by any Borrower or any Lender.

8.4. Reliance by Agent.

(a) The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(b) The Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; *provided* that the Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law.

8.5. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by the Agent. The Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Persons. Each such sub agent and the Related Persons of the Agent and each such sub agent shall be entitled to the benefits of all provisions of this Article VIII (among other relevant provisions of this Agreement) and (as though such sub-agents were the Agent under the Loan Documents) as if set forth in full herein with respect thereto; provided that the Agent shall not be responsible for the negligence or misconduct of any sub agents.

8.6. Resignation of Agents. The Agent may at any time give notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor, which shall be a commercial bank or financial institution reasonably acceptable to the Required Lenders. If no such successor Agent

shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after notice was given, then the Agent may (but shall not be obligated to) appoint a successor Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on such effective date and (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through the retiring Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent under this Agreement. Upon resignation of an Agent, the fees paid to such Agent and the successor Agent shall be paid *pro rata* for the applicable years.

#### 8.7. Non-Reliance on Agents and Other Lenders.

(a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Persons that it (i) possesses such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Persons, of evaluating the merits and risks (including tax, legal, regulatory, accounting and other financial matters) of entering into this Agreement, making Loans and other extensions of credit hereunder and under the other Loan Documents and in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risk and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents and that it has, independently and without reliance upon the Agent or any other Lender or any of their respective Related Persons and based on such documents and information, as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Persons and based on such documents and information as it shall from time to time deem appropriate, continue to be solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, including but not limited to:

- (i) the financial condition, status and capitalization of the Borrowers;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Documents;

(iii) determining compliance or non-compliance with any condition hereunder to the making of Loans; and

(iv) the adequacy, accuracy and/or completeness of any of the information delivered by the Agent, any other Lender or by any other Person under or in connection with this Agreement or any other Loan Documents, the transactions contemplated by this Agreement and the other Loan Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Documents.

8.8. Indemnification. Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Borrowers) from and against such Lender's ratable share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Agent under the Loan Documents (collectively, the "**Indemnified Costs**"); provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrowers hereunder, to the extent that the Agent is not promptly reimbursed for such costs and expenses by the Borrowers. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.8 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person and whether or not the Agent is a party to such investigation, litigation or proceeding. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.8 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

## ARTICLE IX MISCELLANEOUS

### 9.1. Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Agent, the Required Lenders and the Borrowers, and then such waiver shall be effective only in the specific instance and for the specific purpose for which given.

(b) No amendment, waiver or consent to this Agreement or any other Loan Document shall become effective prior to delivery of a copy of such amendment, waiver or consent to Lenders.

(c) Notwithstanding anything in this Section 9.1 to the contrary, the parties hereto shall be permitted to amend this Agreement and the other Loan Documents without further approval or order of the Court to the extent provided in the DIP Order.

9.2. Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing or by Electronic Transmission, unless otherwise expressly specified herein, and addressed to the address set forth on the applicable signature page hereto.

(b) Effectiveness. (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if by facsimile transmission, upon sender's receipt of confirmation of successful transmission, and (v) if by electronic mail, upon successful delivery.

(c) Each Lender and the Agent shall notify Borrowers in writing of any changes in the address to which notices to such Lender or Agent should be directed.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Borrower, the Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

9.4. Costs and Expenses; Yield Protection; Indemnity etc.

(a) Any action taken by any Borrower under or with respect to any Loan Document, even if required under any Loan Document or at the request of Agent or the Lenders, shall be at the expense of such Borrower, and neither Agent nor the Lenders shall be required under any Loan Document to reimburse any Borrower therefor. In addition, the Borrower agrees to pay or reimburse upon demand (a) Agent and the Lenders for all reasonable out-of-pocket costs and expenses incurred by them or any of their respective Related Persons in connection with the investigation, development, preparation, negotiation, syndication, court approval, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, including, without limitation, any out-of-pocket costs and expenses incurred in connection herewith or therewith, in each case including Attorney Costs, (b) Agent for all

reasonable costs and expenses incurred by it or any of its Related Persons in connection with internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Agent for its examiners), (c) each of Agent and its Related Persons for all reasonable costs and expenses incurred in connection with (i) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (ii) the commencement, defense, conduct of, intervention in, or the taking of any other action (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding related to any Borrower, any Loan Document or Obligation, including Attorney Costs, (d) Agent and its Related Persons, in connection with the Cases, including without limitation for, reasonable costs and expenses incurred in connection with (i) the review of pleadings and other filings made with the Bankruptcy Court, (ii) attendance at hearings in respect of the Cases, and (iii) defending and prosecuting any actions or proceedings arising out of or relating to the Obligations, the Liens securing the Obligations or any transactions related to arising in connection with the Loan Documents and (e) the reasonable fees and disbursements of Attorney Costs of one law firm on behalf of each Lender and, in each case, to the extent necessary, one local counsel in each relevant jurisdiction (and in the case of an actual or perceived conflict of interest, one additional law firm on behalf of the affected Lender(s)) incurred in connection with any of the matters referred to in clauses (c) and (d) above. Such expenses shall be part of the Obligations.

(b) If, due to either a change in law, the compliance with any law, guideline or request from any central bank or other governmental authority (whether or not having the force of law) or other Requirement of Law, there shall be any increase in the cost to any Lender of agreeing to make or of making, funding or maintaining Loans, including costs due to taxes imposed on payments to be made hereunder, or changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized, then the Borrowers shall from time to time, upon demand by such Lender, pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to the Borrowers by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) The Borrowers agree to indemnify, defend and save and hold harmless the Agent and each Lender and each of their Affiliates and their respective officers, directors, employees, agents and advisors (each, an “Indemnitee”) from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnitee, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) the DIP Facility, the actual or proposed use of the proceeds of the Loans, the Loan Documents or any of the transactions contemplated hereby and thereby, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee’s gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity applies, such indemnity shall be effective whether or

not such investigation, litigation or proceeding is brought by any Borrower, its directors, shareholders or creditors, any Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrowers also agree not to assert any claim against any Agent, any Lender or any of their Affiliates, or any of their respective officers, directors, employees, agents and advisors, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the DIP Facility, the actual or proposed use of the proceeds of the Loans, the Loan Documents or any of the transactions contemplated by the Loan Documents.

(d) If any Lender determines that the introduction of, or any change in or the interpretation of, any Requirement of Law after the date of this Agreement shall make it unlawful, or any Governmental Authority shall assert that it is unlawful, for any Lender or its applicable lending office to make Loans or to continue to fund or maintain Loans based on LIBOR, then, on notice thereof and demand therefor by such Lender to the Borrower through the Agent, then the obligation of such Lender to make or to continue Loans based on LIBOR shall be suspended and the rate of such Loan shall be converted to an equivalent base rate reasonably acceptable to such Lender until such Lender shall, through the Agent, notify the Borrowers that it has determined that it may lawfully make Loans based on LIBOR.

(e) If any taxes (other than Lender income taxes) shall be required by law to be deducted from or in respect of any amount payable under the Loan Documents to a Lender (i) such amount shall be increased as necessary to ensure that, after all required deductions for taxes are made such Lender receives the amount it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions, (iii) the Borrowers shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within thirty (30) days after such payment is made, the Borrowers shall deliver to the Agent an original or certified copy of a receipt evidencing such payment.

9.5. Marshalling; Payments Set Aside. None of the Agent or Lenders shall be under any obligation to marshal any Property in favor of any Borrower or any other Person or against or in payment of any Obligation. To the extent that any of the Agent or Lenders receives a payment from any Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

9.6. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that the Borrowers may not assign or transfer any of their respective rights or obligations under this Agreement without the prior written consent of each Lender. The rights and obligations of each Lender under this Agreement shall be freely assignable by such Lender.



9.7. Binding Effect. Subject to Section 2.1 hereof, this Agreement shall become effective when it shall have been executed by the Borrowers and the Lenders and approved by the Bankruptcy Court. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrowers, the Agent and each Lender receiving the benefits of the Loan Documents and, in each case, their respective successors and permitted assigns. Except as expressly provided herein, none of the Borrowers nor the Agent shall have the right to assign any rights or obligations hereunder.

9.8. Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

9.9. Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

9.10. Captions. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

9.11. Independence of Provisions. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

9.12. Interpretation. This Agreement is the result of good faith negotiations among the parties hereto and has been reviewed by counsel to Borrowers, the Agent and each Lender. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Agent or the Lenders merely because of the Agent's or the Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 9.14 and 9.15.

9.13. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Agent and the Lenders and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Lenders shall not have any obligation to any Person not a party to this Agreement or the other Loan Documents.

9.14. Governing Law and Jurisdiction.

(a) Governing Law.

(i) The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement (including, without limitation, any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest), except to the extent that the application of the Bankruptcy Code is mandatory.

(ii) IF (I) ANY OF THE CASES ARE DISMISSED, (II) THE BANKRUPTCY COURT ABSTAINS FROM HEARING ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO) OR (III) THE BANKRUPTCY COURT REFUSES TO EXERCISE JURISDICTION OVER ANY ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO), THEN ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM, RELATED TO OR IN CONNECTION WITH THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE COLLATERAL SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE BOROUGH OF MANHATTAN, COUNTY OF NEW YORK, STATE OF NEW YORK. EACH OF THE BORROWERS HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND STATE. EACH OF THE BORROWERS HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST ANY BORROWER BY ANY SECURED PARTY IN ACCORDANCE WITH THIS SECTION.

(iii) Each Borrower hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to Borrower at its address set forth on its signature page and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mail of the United States of America. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of any Lender to bring proceedings against any Borrower in the courts of any other jurisdiction. Each Borrower waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Any judicial proceeding by any Borrower against any Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any related agreement, shall be brought in the Bankruptcy Court provided that if the Bankruptcy

Court does not have jurisdiction, then only in a federal or state court located in the Borough of Manhattan, County of New York, State of New York.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document over which the Bankruptcy Court does not have jurisdiction shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, each Borrower executing this Agreement hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts; provided that nothing in this Agreement shall limit the right of Lenders or the Agent to commence any proceeding in the federal or state courts of any other jurisdiction to the extent Lenders or the Agent determine that such action is necessary or appropriate to exercise its rights or remedies under the Loan Documents. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Each Borrower hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of such Borrower specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non-Exclusive Jurisdiction. Nothing contained in this Section 9.14 shall affect the right of any Lender or the Agent to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Borrower in any other jurisdiction.

9.15. Waiver of Jury Trial. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

9.16. Entire Agreement; Release; Survival.

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER HEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER, CONFIDENTIALITY AND SIMILAR

AGREEMENTS INVOLVING ANY BORROWER, THE AGENT AND ANY LENDER OR ANY OF SUCH AGENT’S OR LENDER’S AFFILIATES RELATING HERETO. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT (OTHER THAN THE DIP ORDER, IN WHICH CASE THE DIP ORDER SHALL GOVERN), THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENT OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Borrowers constitutes a full, complete and irrevocable release of any and all claims which each Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each Borrower hereby waives, releases and agrees (and shall cause each other Borrower to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Any indemnification or other protection provided to any Indemnitee pursuant to this Agreement shall (x) survive the termination of the Commitments and the payment in full or other satisfaction of all other Obligations and (y) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

9.17. Patriot Act. Each Lender and the Agent that is subject to the Patriot Act hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender or Agent to identify each Borrower in accordance with the Patriot Act.

9.18. Joint and Several. The obligations of the Borrowers hereunder and under the other Loan Documents are joint and several.

ARTICLE X  
DEFINITIONS

10.1. Defined Terms. The following terms are defined in the Sections or subsections referenced opposite such terms:

<u>Term</u>	<u>Section</u>
Acceleration .....	7.2(b)
Acceptable Plan .....	4.9(a)(ii)
Activities .....	8.2(b)
Agent.....	Preamble

<u>Term</u>	<u>Section</u>
Agreement.....	Preamble
Applicable Margin .....	1.3(a)
Bankruptcy Court.....	Recitals
Borrower .....	Preamble
Borrowers.....	Preamble
Cases .....	Recitals
Debtor .....	Preamble
Debtors .....	Preamble
DIP Liens .....	Recitals
Event of Default.....	7.1
Indemnified Costs .....	8.8
Indemnitee.....	9.4(c)
Lender .....	Preamble
Lenders.....	Preamble
Loans.....	1.1(a)
Milestones.....	4.9(a)
OFAC.....	3.10
Petition Date.....	Recitals
Plan Support Agreement.....	2.1(i)
primary obligations .....	10.1
primary obligor .....	10.1
SDN List .....	3.10
Term Loan Commitment.....	1.1(a)
Term Loan Commitments .....	1.1(a)

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Agent’s Fees” means the fees payable to the Agent in connection with the DIP Facility as set forth in a letter agreement between the Agent and the Borrowers dated as of the date hereof.

“Attorney Costs” means and includes all reasonable and documented (in summary form) fees and disbursements of any law firm or other external counsel acting for the Agent or any Lender hereunder and as permitted hereunder.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy” (11 U.S.C. § 101, et seq.)

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Borrowing” means each borrowing under a Notice of Borrowing of Loan(s) by Borrowers from Lenders pursuant to this Agreement.

“Budget” means a 13-week budget of Borrowers’ cash flow forecast, commencing with the week in which the DIP Order is entered, containing line items of sufficient

detail to reflect the Borrowers' consolidated projected receipts and disbursements for such 13-week period, and which budget shall be in form and substance reasonably satisfactory to the Lenders, prepared by the Borrowers and delivered to Agent on or before the date hereof and attached to the DIP Order, as updated from time to time in accordance with the Final Cash Collateral Order and the DIP Order.

“Business Day” means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City.

“Carve-Out” has the meaning ascribed to such term in the Final Cash Collateral Order, as modified by paragraph 14 of the DIP Order.

“Cash Collateral” has the meaning ascribed to such term in the Final Cash Collateral Order.

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

“Collateral” has the meaning ascribed to such term in the Final Cash Collateral Order.

“Collateral Documents” means, collectively, this Agreement, the DIP Order and any and all other security agreements, pledge agreements and other similar agreements, and all amendments, restatements, modifications or supplements thereof or thereto, by or between any one or more of any Borrower pledging or granting a Lien on Collateral now or hereafter delivered to the Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against Borrowers in favor of the Agent, on behalf of the Lenders, as any of the foregoing may be amended, restated and/or modified from time to time.

“Commitment” means, for each Lender, its Term Loan Commitment.

“Commitment Percentage” means, as to any Lender, the percentage equivalent of such Lender's Term Loan Commitment to the total aggregate Term Loan Commitments of all the Lenders; provided that following acceleration of the Loans, such term means, as to any Lender, the percentage equivalent of the principal amount of the Loans held by such Lender to the aggregate principal amount of the Loans held by all Lenders.

“Contingent Obligations” mean, as to any Person, any obligation of such Person guaranteeing or in effect guaranteeing any indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof.

“Creditors’ Committee” means the official unsecured creditors’ committee appointed in the Cases.

“Default” means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

“DIP Order” means an order of the Bankruptcy Court in the Cases in substantially the form of Exhibit B (or otherwise in form and substance satisfactory to the Lenders) which authorizes and approves this Agreement and the other Loan Documents on a final basis pursuant to Section 364(c) and (d) of the Bankruptcy Code and Bankruptcy Rules 4001(b) and (c).

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

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail, facsimile or E-Fax, or other customary electronic system.

“Final Cash Collateral Order” means that certain Final Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; and (ii) Modifying Automatic Stay entered by the Bankruptcy Court in the Cases on April 11, 2017 (Docket No. 437), as modified from time to time.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Interest Period” means the period commencing on the Business Day such Loan is disbursed or continued and ending on the date one month thereafter; provided that:

(a) if any Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date;

“Junior Lien Creditors” has the meaning ascribed to such term in the Final Cash Collateral Order.

“Junior Loan Adequate Protection Superpriority Claim” has the meaning ascribed to such term in the Final Cash Collateral Order.

“Junior Loan Replacement Lien” has the meaning ascribed to such term in the Final Cash Collateral Order.

“Junior Permitted Liens” has the meaning ascribed to such term in the Final Cash Collateral Order.

“LIBOR” means, for each Interest Period, the offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Bloomberg Page BBAM1 as of 11:00 A.M. (New York time) two (2) Business Days prior to the first day in such Interest Period. If no such offered rate exists, such rate will be the rate of interest per annum, as determined by Lenders at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to Lenders in the London interbank market for such Interest Period for the applicable principal amount on such date of determination; provided, however, that if LIBOR determined as provided above would be less than one percent (1.00%), such rate shall be deemed to be one percent (1.00%) for purposes of this Agreement.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever.

“Loan Documents” means this Agreement, the DIP Order, the Term Notes, the Collateral Documents, the Final Cash Collateral Order and all documents delivered to the Agent or the Lenders in connection with any of the foregoing.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“Material Adverse Effect” means a material adverse change in any of (a) the condition (financial or otherwise) or business, performance, operations or Property of the Borrowers taken as a whole; (b) the ability of any Borrower to perform its obligations under any Loan Document; or (c) the validity or enforceability of any Loan Document or the rights and remedies of the Lenders under any Loan Document.



“Maturity Date” means the earlier of (x) the date that is four (4) months after the entry of the DIP Order by the Bankruptcy Court or (y) the effective date of a Chapter 11 plan in the Cases.

“Notice of Borrowing” means a notice given by a Borrower to Lenders pursuant to Section 1.4, in substantially the form of Exhibit B hereto.

“Obligations” means all Loans and other indebtedness, fees, interest, advances, debts, liabilities, obligations, covenants and duties owing by any Borrower to any Lender, Agent or any other Person required to be indemnified, that arises under any Loan Document, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner (including, without limitation, under the DIP Order), whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

“Organization Documents” means, (a) the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation and any shareholder rights agreement or (b) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of a Person.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56

“Permits” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Person” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Related Person” means, with respect to any Person, each affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisors and other consultants and agents of or to such Person or any of its affiliates.

“Required Lenders” means, at any time, two or more un-Affiliated Lenders having at the time in excess of fifty percent (50%) of the aggregate Term Loan Commitments then in effect (or if the Term Loan Commitments have been terminated, the Loans outstanding);

provided, however, that if, at any time, there shall only be one Lender, then the Required Lenders shall mean such Lender.

“Requirement of Law” means with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

“Responsible Officer” means the chief executive officer or the president of the Borrower or any other officer having substantially the same authority and responsibility.

“Sprint Litigation” means the lawsuit commenced by the Creditors’ Committee and Cortland Capital Market Services LLC, as agent for the lenders under the Junior Loan Agreement, against Sprint Solutions, Inc., and any related pending or threatened litigation by or against Sprint Solutions, Inc., Carphone Warehouse or any of their respective Related Persons.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“Superpriority Claim” means an allowed claim against any Borrower or such Borrower’s estate in the Cases which is an administrative expense claim having priority over (a) any and all allowed administrative expenses and (b) all unsecured claims now existing or hereafter arising, including any administrative expenses of the kind specified in the Bankruptcy Code, including without limitation, Section 105, 326, 328, 330, 331, 364(c)(1), 365, 503, 506(c), 507, 546, 726, 1113 or 1114 of the Bankruptcy Code.

“Term Note” means a promissory note of the Borrowers payable to a Lender in substantially the form of Exhibit A hereto, evidencing the Obligations of the Borrowers to such Lender resulting from the Loans made to the Borrowers by such Lender or its predecessor(s).

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

“United States” and “U.S.” each means the United States of America.

## 10.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of

defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) The Agreement. The words “hereof, “herein”, “hereunder” and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day.

(e) Contracts; Instruments. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements, orders and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

10.3. Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

BORROWERS:

**GENERAL WIRELESS OPERATIONS INC.**

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

**GENERAL WIRELESS HOLDINGS INC.**

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

**GENERAL WIRELESS INC.**

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

**GENERAL WIRELESS CUSTOMER SERVICE INC.**

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

Address for notices:

[300 RadioShack Circle  
Fort Worth, TX 76102-1964]  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

**LENDERS**

**[PRISMA CAPITAL PARTNERS LP]**  
as a Lender

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

**[KKR CREDIT ADVISORS (US) LLP]**  
as a Lender

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

Address for notices:

[c/o Prisma Capital Partners LP]  
9 West 57<sup>th</sup> Street, 26<sup>th</sup> Floor  
New York, NY 10019  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attention: Diane Meyers  
Phone: 212-373-3000  
Fax: 212-757-3990  
Email: [dmeyers@paulweiss.com](mailto:dmeyers@paulweiss.com)

**STANDARD GENERAL MASTER FUND LP,**  
as a Lender

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

**STANDARD GENERAL MASTER FUND II LP,**  
as a Lender

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

Address for notices:

c/o Standard General LP  
767 Fifth Avenue, 12<sup>th</sup> Floor  
New York, NY 10153  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

**[SABA CAPITAL]**

as a Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

c/o Saba Capital  
405 Lexington Avenue, 58<sup>th</sup> Floor  
New York, NY 10174

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

With a copy to:

**AGENT:**

CORTLAND CAPITAL MARKET SERVICES  
LLC,  
as Agent

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

Address for notices:

CORTLAND CAPITAL MARKET SERVICES LLC  
225 West Washington Street, 21<sup>st</sup> Floor  
Chicago, Illinois 60606  
Attention: Legal Department and Jeffrey Vaughn  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: [legal@cortlandglobal.com](mailto:legal@cortlandglobal.com)  
[jeffrey.vaughn@cortlandglobal.com](mailto:jeffrey.vaughn@cortlandglobal.com)

With a copy to:



