

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

<p>In re:</p> <p>CST INDUSTRIES HOLDINGS INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 17-11292 (BLS)</p> <p>Joint Administration Pending</p>
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION TO OBTAIN
POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH
COLLATERAL, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (IV)
GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED
LENDERS, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A
FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby move (the “Motion”) and request, pursuant to sections 105(a), 361, 362, 364, 503(b) and 507(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), that the Court enter the proposed interim order substantially in the form annexed hereto as **Exhibit 1** (the “Interim Order”) and a final order (the “Final Order,” together with the Interim Order, the “DIP Orders”) granting the relief set forth below and described more fully in the Motion:²

- (i) authorizing the Debtors to obtain or guaranty obligations in respect of postpetition financing pursuant to the terms and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: CST Industries Holdings Inc. (4872), CST Industries, Inc. (9554), CST Power & Construction, Inc. (9480). The Debtors’ headquarters are located at: 903 E. 104th Street, Suite 900, Kansas City, Missouri 64131.

² Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Interim Order or, to the extent not defined therein, then as defined in the DIP Financing Agreement.

conditions of the DIP Orders and that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, substantially in the form attached to the proposed Interim Order as Exhibit A (the “DIP Facility” or the “DIP Financing Agreement,” the loans thereunder, the “DIP Loans”);

- (ii) authorizing the Debtors to execute and deliver the DIP Financing Agreement (as defined herein) and all related documentation (collectively, the “DIP Loan Documents”);
- (iii) granting liens and superpriority administrative expense claims to the Debtors’ postpetition lenders;
- (iv) authorizing the Debtors to use “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code pursuant to Bankruptcy Code sections 361 and 363 and Bankruptcy Rules 4001(b) and 6004;
- (v) granting adequate protection to Prepetition Secured Parties;
- (vi) modifying the automatic stay as to the Debtors’ postpetition lenders to allow implementation of the Debtors’ postpetition financing, the Interim Order, and the Final Order; and
- (vii) granting related relief, including scheduling an Interim Hearing (as defined below) to consider immediate entry of the Interim Order, scheduling a Final Hearing (as defined below) to consider entry of the Final Order, and finding that any applicable notice requirements or stay provisions of the Bankruptcy Rules and Local Rules are hereby satisfied or waived.

In support of the Motion, the Debtors submit the *Declaration of Timothy J. Carpenter, Chief Executive Officer of CST Industries, Inc., in Support of First Day Relief* (the “Carpenter Declaration”), and the *Declaration of Robert Del Genio in Support of Debtors’ DIP Financing Motion* (the “Del Genio Declaration”), each of which is filed contemporaneously herewith, and respectfully submit as follows:

Background

1. On June 9, 2017 (the "Petition Date"), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors are operating their respective businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Carpenter Declaration and the Del Genio Declaration.

Jurisdiction

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and the Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code.

Facts Relevant to this Motion

5. As of the Petition Date, the Debtors have secured indebtedness in the approximate principal amount of \$56 million (excluding certain accrued amounts). The following is a brief summary of the history and present status of the Debtors' prepetition secured debt obligations.

A. The Debtors' Businesses

6. CST is the leading global manufacturer of factory coated steel storage tanks, aluminum domes, and specialty covers. CST's products are used by customers to store a wide array of products, including, among others, architectural and agricultural products, water, dry

bulk, oil, and gas. CST also builds covers for a variety of specialty segments, ranging from sports stadium domes to the famous Epcot Center ball.

7. The Debtors generate revenue by providing storage systems for engineering and manufacturing professionals in thousands of different industries throughout the world. As of the Petition Date, the Debtors have installed more than 368,000 tanks and over 18,000 covers in 125 countries.

B. The BNP Loan Agreement

8. On May 23, 2012, Debtor CST Industries, Inc. ("CST Industries") entered into a credit agreement (the "BNP Loan Agreement"), under which BNP Paribas (the "Pre-Petition Agent") served as administrative agent for the lenders (the "Pre-Petition Secured Lenders"). The BNP Loan Agreement established a term loan facility providing an aggregate commitment of \$85 million and a revolving loan facility of up to \$25 million (collectively, the "BNP Credit Facility"). Contemporaneously with the execution of the BNP Loan Agreement, the Pre-Petition Agent and Debtor CST Industries Holdings Inc. ("CST Holdings") entered into an agreement pursuant to which CST Holdings and Debtor CST Power & Construction, Inc. ("CST Power") provided a guaranty of CST Industries' obligations under the BNP Loan Agreement (the "Guaranty Agreement"). The BNP Loan Agreement's terms provide for maturation on May 23, 2017, but, as described below, the parties to the BNP Loan Agreement entered into a forbearance agreement. As of the Petition Date, the principal amount outstanding under the BNP Loan Agreement totaled approximately \$56 million (exclusive of certain accrued amounts).

C. Events Leading to the DIP Facility

9. In late 2016, the Debtors began experiencing increased liquidity constraints as a result of their debt service obligations. In addition, the downturn in the oil and gas market in

2015 and 2016 and in the Middle East water market over the last several months of 2016 resulted in lower than anticipated sales revenue. As of early 2017, a payment default existed under the BNP Loan Agreement and the Debtors were in covenant default with respect to several covenants contained in the BNP Loan Agreement and anticipated that additional defaults would occur.

10. Upon the occurrence of an event of default, the Pre-Petition Secured Lenders could have accelerated the repayment of all amounts then outstanding. This would have had significant negative consequences for CST and its corporate family as a whole.

11. To avoid those consequences, on March 31, 2017, the Debtors entered into a forbearance agreement (the "Forbearance Agreement") with the Pre-Petition Secured Lenders pursuant to which the Pre-Petition Secured Lenders agreed to refrain from enforcing certain of their rights under the BNP Loan Agreement through May 15, 2017 absent the occurrence of certain enumerated events that would terminate the agreed forbearance period. The forbearance period expired on May 15, 2017.

12. The Debtors were unable to obtain interim financing, and as a result, commenced these Chapter 11 Cases to preserve and maximize the value of their assets for the benefit of all of their stakeholders.

The Debtors' Proposed DIP Facility

13. The Debtors presently lack sufficient liquidity not only to support their operations but also to conduct a successful sale process. The Debtors have concluded that they require postpetition financing to meet their ongoing working capital and general business needs during these Chapter 11 Cases. Accordingly, in consultation with their legal and financial advisors, CST Industries, as borrower (the "Borrower" or "Company"), and BNP Paribas as

administrative and collateral agent (in such capacity, the “DIP Agent”) for certain lenders (in such capacity, the “DIP Lenders”), have negotiated the DIP Facility, which provides for the Debtors to receive debtor-in-possession financing. Debtor CST Holdings and Debtor CST Power will provide guarantees of the obligations incurred by CST Industries under the DIP Facility.³

14. The terms of this DIP Facility are memorialized in the DIP Financing Agreement, attached to the Interim Order as **Exhibit A**.⁴ The DIP Financing Agreement provides for a postpetition loan commitment in an aggregate principal of up to \$15 million that shall consist of (i) extensions of new revolving loans; and (ii) \$2 million that may be used for purpose of cash collateralizing and obtaining letters of credit (the extensions of credit referred to in subparagraphs (i) and (ii), the “DIP Revolving Loans”). Initially, for 120 days after the closing date, the DIP Revolving Loans will be available in an aggregate outstanding principal amount of \$14 million (inclusive of the \$2 million available to cash collateralize letters of credit). The DIP Revolving Loans may be extended, at CST Industries’ request and with the consent of the DIP Lenders, for two (2) additional thirty (30) day periods. The DIP Financing Agreement provides for an aggregate outstanding principal amount of DIP Revolving Loans of \$14.5 million (inclusive of the \$2 million available to cash collateralize letters of credit) during the first thirty (30) day

³ The relief sought in this Motion remains subject to (i) ongoing negotiation, review, and revision by the proposed DIP Agent and DIP Lenders and (ii) the proposed DIP Lenders obtaining credit approval to enter the DIP Loan Documents which the proposed DIP Lenders have not obtained as of this filing. Nothing herein should be construed as a commitment by either the DIP Agent or the DIP Lenders to lend or take any other action with respect to the Debtors or the proposed DIP Facility.

⁴ This Motion contains summaries of certain terms and conditions set forth in the DIP Financing Agreement and Interim Order. Reference is made to the DIP Financing Agreement for a full and complete description of the DIP Financing Agreement. To the extent these summaries are inconsistent with the DIP Financing Agreement, the DIP Financing Agreement shall control. To the extent these summaries are inconsistent with the Interim Order, the Interim Order shall control. To the extent the Interim Order and DIP Financing Agreement conflict, the Interim Order shall control. Unless otherwise indicated, the terms summarized herein will become effective upon entry of the Interim Order and will remain in effect in the event final relief is denied as provided under Bankruptcy Rule 4001(c)(2).

extension period and an aggregate outstanding principal amount of \$15 million (inclusive of the \$2 million available to cash collateralize letters of credit) during the second thirty day extension period.

Local Rule 4001-2 Disclosures

15. The following financing terms are required to be identified pursuant to Local Rule 4001-2. As discussed herein, such terms are necessary and justified in the context of, and the circumstances relating to, these Chapter 11 Cases.

- (a) **Cross-Collateralization Protection.** Local Rule 4001-2(a)(i)(A) requires disclosure of provisions that grant cross-collateralization protection to prepetition secured creditors. The DIP Loan Documents do not provide cross-collateralization protection to prepetition secured creditors.
- (b) **Stipulations to Validity, Perfection, and Amount of Pre-Petition Liens; Waiver of Pre-Petition Claims.** Local Rule 4001-2(a)(i)(B) requires the disclosure of provisions or findings of fact that bind the estate with respect to validity, amount, or perfection of liens or a waiver of claims, without first giving certain parties in interest certain amounts of time to conduct an investigation. The proposed Interim Order includes certain Debtors' Stipulations related to the validity, amount, and perfection of the liens and claims of the Pre-Petition Secured Lenders, *see* Interim Order ¶ D, as well as a Challenge Period of sixty (60) days for the Committee, or other parties in interest with requisite standing solely if no Committee is formed, *see* Interim Order ¶ 13.
- (c) **Waiver of Section 506(c) Surcharge.** Local Rule 4001-2(a)(i)(C) requires disclosure of provisions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code. The proposed Interim Order includes a finding that the DIP Agent and DIP Lenders and the Prepetition Secured Parties are, subject to entry of the Final Order, entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, *see* Interim Order ¶ I, and provides that no costs or expenses of administration shall be surcharged against the DIP Agent, DIP Lenders, Prepetition Secured Parties, or any of their respective claims, the Carve-Out, the DIP Collateral or the Prepetition Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Agent or Prepetition Agent (as applicable), *see* Interim Order ¶ 18.
- (d) **Liens on Avoidance Actions.** Local Rule 4001-2(a)(i)(D) requires disclosure of provisions that immediately grant the prepetition secured

creditor liens on avoidance actions. The DIP Loan Documents do not grant prepetition secured creditors liens on avoidance actions, but subject to the entry of the Final Order, the DIP Loan Documents do grant liens on avoidance action proceeds.

- (e) **Exchange of Prepetition Obligations.** Local Rule 4001-2(a)(i)(E) requires disclosure of provisions that use postpetition loans from a party to repay its own prepetition debt. The DIP Loan Documents do not provide for the use of postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt.
- (f) **Disparate Treatment of Professionals.** Local Rule 4001-2(a)(i)(F) requires disclosure of carve-out provisions that provide disparate treatment for professionals retained by the creditors' committee from those retained by the debtor. The DIP Loan Documents provide for a "carve-out," pursuant to the proposed Interim Order, of, among other things, unpaid, reasonable professional fees and expenses payable to each professional retained by the Debtors and the Committee that are incurred or accrued prior to the date of the occurrence of an Event of Default, but subject to the aggregate amount(s) allocated to each such professional in the Initial Budget, including investment banker's fees payable on a sale of substantially all of the Debtors' assets, and ultimately allowed by the Court pursuant to sections 328, 330, 331 and 503 of the Bankruptcy Code or any order of the Court (whenever such fees may be actually incurred prior to the date of termination as provided therein) and fees related to a Committee investigation, if any. *See* Interim Order ¶ 10.
- (g) **Priming Liens.** Local Rule 4001-2(a)(i)(G) requires disclosure of provisions that prime any secured liens without the consent of the lienholder. The Interim Order provides, with certain exceptions and as described more fully in the DIP Loan Documents, applicable, valid, enforceable and fully perfected, liens (including priming liens) and security interests in the Collateral, which, subject to the DIP Loan Documents, shall include, without limitation, all of the property, assets or interests in property or assets of the Debtors, and all "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever. *See* Interim Order ¶ 6.
- (h) **Equities of the Case.** Local Rule 4001-2(a)(1)(H) requires disclosure of provisions 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 Interim Order includes a finding that the DIP Agent and DIP Lenders and the Prepetition Secured Parties are, subject to entry of the Final Order, entitled to a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code, *see* Interim Order ¶ I, and provides that no person may assert an "equities of the case" claim under section 552(b) of the Bankruptcy Code against the DIP Agent, DIP Lender, or Prepetition

Secured Parties with respect to proceeds, product, offspring or profits of any of the DIP Collateral or the Prepetition Collateral, *see* Interim Order ¶ 21(a).

Material Terms of the DIP Financing Agreement

16. The following is a summary of the material terms of the DIP Financing Agreement and the Interim Order:

<u>Borrower:</u>	CST Industries, Inc., as debtor and debtor in possession in these Chapter 11 Cases.
<u>Guarantors:</u>	CST Industries Holdings Inc. and CST Power and Construction, Inc., each of the Subsidiary Guarantors being a debtor in possession in these Chapter 11 Cases.
<u>DIP Agent:</u>	BNP Paribas
<u>Loan Facility:</u>	Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement
<u>Borrowing Availability:</u>	<p>The DIP Financing Agreement provides, subject to the terms and conditions set forth in the DIP Loan Documents, postpetition financing in an aggregate amount of \$15,000,000, comprising up to an aggregate amount of (i) \$13,000,000 in revolving loans and (ii) \$2,000,000 to be used for the purpose of cash collateralizing and obtaining letters of credit (the “<u>Additional Available Amount</u>”). The DIP Revolving Loans will be made available to the Debtors (subject to the applicable terms and conditions) as follows:</p> <ul style="list-style-type: none"> • up to an aggregate amount of \$14,000,000 (including the Additional Available Amount) during the period ending 120 days after the Closing Date (the “<u>Initial Financing Period</u>”); • subject to the Debtors’ request and the DIP Agent’s consent thereto, up to an aggregate amount of \$14,500,000 (including the Additional Available Amount) during the 30-day period immediately following the expiration of the Initial Financing Period (the “<u>Second Financing Period</u>”); and • subject to the Debtors’ request and the DIP Agent’s consent thereto, up to an aggregate amount of \$15,000,000 (including the Additional Available Amount) during the 30-day period immediately following the expiration of the Second Financing Period (the “<u>Third Financing Period</u>”). <p>During the Third Financing Period, the Additional Available Amount may be used as cash in accordance with the applicable Budget. DIP Financing Agreement § 2.1A; Interim Order ¶ 2(a).</p>
<u>Interest Rates:</u>	<p>At the election of the Borrower, the interest rate will be either (i) the sum of the Base Rate plus 5.25% per annum or (ii) the sum of Adjusted LIBOR plus 6.25% per annum.</p> <p>The “Base Rate” means, for any day, a rate per annum (rounded upwards to the nearest 1/100 of 1%) equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (iii) 2.50%.</p>

	<p>“Adjusted LIBOR” means, for each Interest Period in respect of any LIBOR Loan, an interest rate per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) equal to the greater of (x) 1.50% and (y) the interest rate per annum determined pursuant to the following formula:</p> $\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$ <p>DIP Financing Agreement §§ 1.1, 2.2A</p>
<u>Default Interest:</u>	<p>An additional 2% per annum</p> <p>DIP Financing Agreement § 2.2E</p>
<u>DIP Commitment Fees:</u>	<p>Each DIP Lender shall be paid a commitment fee equal to the average of the daily excess of the Commitment Amount over the aggregate outstanding principal amount of the Loans multiplied by 0.50% per annum.</p> <p>DIP Financing Agreement § 2.3A</p>
<u>DIP Upfront Fee:</u>	<p>Each Lender shall be paid upfront fees equal to 2.0% of such Lender’s Commitment.</p> <p>DIP Financing Agreement § 2.3B</p>
<u>Exit Fee:</u>	<p>Company agrees to pay to DIP, on the date on which the Chapter 11 Cases are concluded, for distribution to each Lender, exit fees equal to 2.0% of such Lender’s Commitment.</p> <p>DIP Financing Agreement § 2.3C</p>
<u>DIP Closing Date:</u>	<p>June 13, 2017</p> <p>DIP Financing Agreement § 1.1</p>
<u>Commitment Termination Date:</u>	<p>The DIP Financing Agreement provides that the DIP Lenders’ Commitment will expire on the date falling one hundred eighty (120) days after the Closing Date. Subject to the terms of the DIP Financing Agreement, the Borrower is entitled to request two (2) extensions of thirty (30) days.</p> <p>DIP Financing Agreement §§ 1.1, 2.1A(i), 2.11</p>
<u>Use of Proceeds:</u>	<p>Company shall use the proceeds of the Loans solely in accordance with the Budget (including, subject to <u>subsection 8.19</u>, by reason of a Permitted Variance) to: (i) provide working capital to the Loan Parties (including the cash collateralization of letters of credit permitted to be issued on behalf of Company and in accordance with the Budget); (ii) fund interest, fees and other payments contemplated hereunder, including, without limitation, the Adequate Protection Payments; and (iii) fund costs of the administration of the Chapter 11 Cases.</p> <p>DIP Financing Agreement § 2.5B</p>
<u>Adequate Protection:</u>	<p>To induce the DIP Agent and DIP Lenders to provide the DIP Facility, and in exchange for the subordination of certain of the rights of the Prepetition Secured Parties, the Prepetition Agent for its benefit and the benefit of the Prepetition Lenders will receive, among other things,:</p> <p>(a) <u>Replacement Liens</u>. Valid, perfected, postpetition replacement security interests in and liens in all of the DIP Collateral to secure the Adequate Protection Claims, effective and perfected upon the date of entry of</p>

the Interim Order.

(b) Adequate Protection Superpriority Claims. Superpriority claims, for any Diminution, which claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever.

(c) Adequate Protection Payments. From and after the Petition Date, the Debtors shall, (i) continue to pay, as and when due, all (x) interest (at a rate equal to the sum of Base Rate (as defined in the Prepetition Credit Agreement) plus 1.00% as adequate protection) and (y), subject to Sections 2.3 and 10.2 of the Prepetition Credit Agreement, fees and expenses payable as required in the Prepetition Loan Documents, including, without limitation, reasonable and documented legal and financial advisory fees and expenses of any Prepetition Secured Party, and (ii) subject to Section 10.2 of the Prepetition Credit Agreement and without duplication of clause (i)(y) above, pay all fees and out-of-pocket costs and expenses of any Prepetition Secured Party (including reasonable and documented fees and expenses of legal advisors, financial advisors and investment banks) incurred in connection with the Chapter 11 Cases, whether such amounts were incurred before or after the Petition Date. Amounts for payable solely for legal, financial advisory, or other professionals' fees and expenses shall not be subject to allowance by this Court; provided, however, that such fees and expenses subject to the procedures set forth in Paragraph 20 of the Interim Order.

(d) Credit Bid Rights. Subject to entry of the Final Order and the expiration of the Challenge Period, the DIP Agent, DIP Lenders, and Prepetition Secured Parties, as applicable, shall have the right to "credit bid" the respective claims it represents up to the full amount of (x) the Prepetition Obligations (but only as to the Prepetition Collateral) and (y) the DIP Loan Obligations (but only as to the DIP Collateral), during any sale of all or any portion of the DIP Collateral or Prepetition Collateral, as applicable.

The Prepetition Adequate Protection Rights are subject and subordinate to, as applicable, (i) the DIP Liens; (ii) the DIP Superpriority Claims; (iii) entry of the Final Order; (iv) expiration of the Challenge Period; and/or (v) the Carve-Out.

Interim Order ¶ 8(a)-(e).

Carve-Out:

All of the DIP Liens, the DIP Superpriority Claims, the Replacement Liens, the Adequate Protection Claims, the Prepetition Liens, and any other liens, claims, or interest of any person, shall be subject and subordinate to the Carve-Out. "Carve-Out" shall mean the sum of: (i) fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court, (ii) unpaid, reasonable professional fees and expenses payable to each professional retained by the Debtors and the Committee that are incurred or accrued prior to the date of the occurrence of an Event of Default, but subject to the aggregate amount(s) allocated to each such professional in the Initial Budget, including investment banker's fees payable on a sale of substantially all of the Debtors' assets, and ultimately allowed by the Court pursuant to sections 328, 330, 331 and 503 of the Bankruptcy Code or any order of the Court (whenever such fees may be actually incurred prior to the date of termination as provided herein) and fees related to a Committee investigation, if any, and (iii) Case Administration Fees and Professional Fees paid on or after the date of the DIP Agent's written notice to the Debtors of the occurrence of an Event of Default and the termination of the DIP Facility in an aggregate amount not to exceed \$500,000, subject to the aggregate amount(s) allocated to each professional in the Initial Budget; provided, however, that the

	<p>DIP Agent and the DIP Lenders shall not be obligated to fund any amounts under the DIP Loan Documents or the Interim Order in excess of the Interim Commitment. Any funding of the Carve-Out expenses shall be added to and made part of the DIP Loan Obligations and secured by the DIP Collateral.</p> <p>Interim Order ¶ 10.</p>
<p><u>Milestones:</u></p>	<p>Borrower shall:</p> <ul style="list-style-type: none"> (i) the Interim Order shall be entered by the Bankruptcy Court in the Chapter 11 Cases no later than three (3) Business Days after the Petition Date; (ii) on or before June 16, 2017, Company shall have filed with the Bankruptcy Court an application to approve the retention and employment of an investment bank, financial advisor or similar such firm to conduct the Bankruptcy Sale; (iii) on or before June 23, 2017, Company shall (a) complete a Confidential Information Memorandum or other marketing materials and (b) submit to the DIP Agent a list of potential strategic and financial buyers; (iv) the Final Order shall be entered by the Bankruptcy Court in the Chapter 11 Cases no later than thirty (30) calendar days after the Petition Date; (v) on or before June 30, 2017, Company shall file a bid procedures motion in the Chapter 11 Cases for the Bankruptcy Sale; (vi) on or before July 24, 2017, the Bankruptcy Court shall have entered a bid procedures order in form and substance satisfactory to the DIP Agent relating to the Bankruptcy Sale; (vii) on or before September 25, 2017, the Loan Parties shall have obtained at least one bid that the Loan Parties shall have determined with the consent of the DIP Agent, constitutes a “qualified bid” from a “qualified bidder” under the applicable bid procedures; (viii) on or before October 6, 2017, the Bankruptcy Court shall have entered a Bankruptcy Sale Order; and (ix) on or before October 13, 2017, the transaction or transactions contemplated in connection with the Bankruptcy Sale and Bankruptcy Sale Order shall have been consummated and Company and Loan Parties, as applicable, shall have irrevocably and unconditionally paid the DIP Payoff Amount. <p>DIP Financing Agreement § 6.12A</p>
<p><u>Events of Default:</u></p>	<p>The following are enumerated Events of Default in the DIP Financing Agreement:</p> <p><u>Failure to Make Payments When Due.</u> Failure by Company to pay any installment of principal of any Loan when due; or</p> <p><u>Default in Other Agreements.</u> Failure of Company or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness or Contingent Obligations in an individual principal amount of \$3,500,000 or more or with an aggregate principal amount of \$5,000,000 or more; or</p> <p><u>Default in Other Agreements.</u> Breach or default by Company or any of its Subsidiaries with respect to any other material term of (a) items of Indebtedness or Contingent Obligations or (b) any loan agreement, mortgage,</p>

indenture or other agreement relating to such item(s) of Indebtedness or Contingent Obligation(s), if the effect of such breach or default is to cause, that Indebtedness or Contingent Obligation(s) to become or be declared due and payable prior to its or the underlying obligation's stated maturity; or

Breach of Certain Covenants. Failure of Company to perform or comply with any term or condition contained in subsection 2.5, 6.2 or Section 7 of the DIP Financing Agreement; or

Breach of Warranty. Any representation, warranty, certification or other statement made by Company or any of its Subsidiaries in any DIP Loan Document or in any statement or certificate at any time given by Company or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made, subject to a seven-day cure period;

Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other DIP Loan Documents, other than any such term referred to in subsections 8.1 and 8.3, and such default shall not have been remedied or waived within seven Business Days; or

Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$3,500,000 or (ii) in the aggregate at any time an amount in excess of \$5,000,000 subject to certain insurance-related requirements; or

Employee Benefit Plans. There shall occur one or more ERISA Events or similar events in respect of any Foreign Plans, that individually or in the aggregate has resulted in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$3,500,000 during the term of this Agreement; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA) and unfunded liabilities in respect of Foreign Plans, individually or in the aggregate for all Pension Plans, which could reasonably be expected to have a Material Adverse Effect; or

Invalidity of Loan Documents; Failure of Security; Repudiation of Obligations. At any time after the execution and delivery thereof, (a) Any DIP Loan Document or any provision thereof, for any reason other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void.

Conduct of Business By Holdings. Holdings shall (i) own any assets other than (a) Investments in Company and through Company, Subsidiaries of Company and (b) Cash and Cash Equivalents or (ii) create any consensual Lien on Company's Capital Stock other than the Lien under the Holdings Pledge Agreement and the Lien securing the Pre-Petition Senior Loan Obligations pursuant to the "Holdings Pledge Agreement" (as defined in the Pre-Petition Senior Credit Agreement); or

Bankruptcy Matters. The Bankruptcy Court shall enter an order authorizing, approving or granting (or Company shall file a motion seeking such authorization, approval or grant of) (i) post-Petition Date financing under section 364 of the Bankruptcy Code or on any other basis that is not permitted by, or otherwise provided for under, this Agreement or the Interim Order or Final Order (as applicable), (ii) any Liens on the Collateral not otherwise permitted herein, (iii) dismissal of the Chapter 11 Cases or conversion of any Chapter 11 Cases to one under Chapter 7 of the Bankruptcy Code, (iv) appointment of a Chapter 11 trustee in any Chapter 11 Case, (v) any other

superpriority claim senior to or *pari passu* with the superpriority claims of the DIP Agent or the DIP Lenders, (vi) modification of this Agreement (other than pursuant to subsection 10.6) or the Final Order, (vii) any action materially adverse to the DIP Agent or the DIP Lenders, or their rights and remedies with respect to or interest in the Collateral, (viii) appointment of an examiner having powers beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code in any Chapter 11 Case, (ix) relief from the automatic stay for the benefit of any creditor with a security interest in the Collateral without the consent of the DIP Agent and the Requisite Lenders, or (x) termination of the use of cash collateral by the Loan Parties.

Prepetition Debts. Company shall make any pre-petition payment or otherwise pay any claim that accrued prior to the Petition Date without the prior written consent of the DIP Agent and the Requisite Lenders in their sole discretion or other than as permitted by the Budget (and any Permitted Variances thereto).

Actions Against DIP Agent. Company shall commence any action against the DIP Agent or any Lender, on behalf of itself or any of its affiliates, officers or employees.

Material Adverse Effect. Any Material Adverse Effect has occurred following the Closing Date, other than the filing of the Chapter 11 Cases or as described on Schedule 5.4.

Sale Milestones. The failure of Company to comply with any of the milestones set forth in subsection 6.12, regardless of whether Company used commercially reasonable efforts to comply with any such milestone, subject to a five Business Day cure period.

Budget. Any Variance shall occur, other than a Permitted Variance; or

506(c) Claims. A claim under Section 506(c) of the Bankruptcy Code or otherwise shall have been allowed against any of the DIP Agent, any DIP Lender, or the Prepetition Collateral.

Competing Plans. The filing by any Loan Party of any plan of reorganization or related disclosure statement or any direct or indirect amendment, modification, waiver or other change to the Chapter 11 Plan, or that treats the claims of the DIP Agent or any of the DIP Lenders in any manner to which they do not consent in their respective sole discretion.

Exclusivity. The Bankruptcy Court shall enter an order that results in any termination or modification of the exclusivity periods set forth in Section 1121 of the Bankruptcy Code or any such exclusivity periods shall have expired.

Bankruptcy Orders Not in Full Force and Effect. The Interim Order (prior to entry of the Final Order) or the Final Order shall cease to be in full force and effect.

Compliance with Interim and Final Orders. The failure of any Loan Party to comply in any material respect with the Interim Order (prior to entry of the Final Order) or the Final Order.

Asset Sales. Any sale or other Disposition of all or a material portion of the Collateral other than as permitted by the Interim Order or Final Order (or pursuant to another expressly permitted transaction), or the filing by any Loan Party of any motion to sell all or a substantial part of the Collateral on terms that are not acceptable to the Requisite Lenders, in their sole discretion.

Administrative Expense or Priority Claims. A claim against Company arising prior to the Effective Date (as defined in the Chapter 11 Plan) of a kind

	<p>specified under or entitled to priority pursuant to sections 364(c)(1), 503(b), 507(a), 507(b) or 1114(e)(2) of the Bankruptcy Code or otherwise shall have been allowed in excess of \$125,000 against Company as a result of litigation with employees or former employees of Company (including, without limitation, wage and hour collective or class action litigation involving Company).</p> <p><u>Challenge Under Final Order.</u> If sixty (60) days after a Committee or a party in interest obtains standing to assert a Challenge (as defined in the Interim Order), any such Challenge (as defined in the Interim Order) is not rejected via a final, nonappealable order.</p> <p><u>Alteration of Interim Order or Final Order.</u> Entry of an order to (i) revoke, reverse or stay the Interim Order or the Final Order, (ii) modify, supplement or amend the Interim Order or the Final Order, or (iii) grant or permit the grant of the Liens on the Collateral other than as permitted by the Loan Documents, including, but not limited to, the Interim Order and the Final Order.</p> <p>DIP Financing Agreement § 8</p>
<u>Expenses:</u>	<p>The DIP Financing Agreement includes customary provisions regarding compensation and reimbursement for certain fees and expenses incurred by the DIP Agent and the DIP Lenders.</p> <p>DIP Financing Agreement § 10.2</p>
<u>Indemnification:</u>	<p>The DIP Financing Agreement includes customary provisions regarding the indemnification of the DIP Agent and the DIP Lenders.</p> <p>DIP Financing Agreement § 10.3</p>

Relief Requested

17. By this Motion, pursuant to sections 105, 361, 362, 363, 364, 503(b) and 507(a) of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001 and 9014, the Debtors request that the Interim Order and the Final Order include, without limitation, the following relief:

- (a) Authorize CST Industries to enter into the DIP Financing Agreement and the applicable Debtors to enter or execute the DIP Loan Documents;
- (b) Grant superpriority administrative expense claim status under section 364(c)(1) of the Bankruptcy Code to the DIP Agent and DIP Lenders for claims made pursuant to the DIP Loan, subject to the Carve-Out;
- (c) Modify the automatic stay as to the DIP Agent and DIP Lenders, as the case may be, to allow implementation of the provisions of the DIP Financing Agreement, the Interim Order, and the Final Order without further notice or order of the Court;
- (d) Waive notice requirements provided for by Bankruptcy Rule 6004(a), the twenty-one (21) day stay provided for by Bankruptcy Rule 6003(b) and the fourteen (14) day stay provided for by Bankruptcy Rule 6004(h);

- (e) Schedule an interim hearing (the “Interim Hearing”) pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 to consider the immediate entry of the Interim Order, which among other things, (i) approves, on an interim basis, the DIP Financing Agreement and (ii) authorizes the Debtors to obtain the DIP Loans on an interim basis in an aggregate principal amount of up to \$14 million inclusive of a subfacility of \$2 million to cash collateralize the issuance of letters of credit;
- (f) Schedule a final hearing (the “Final Hearing”) to consider entry of the Final Order, as defined above and as described in the DIP Financing Agreement, which, among other things, authorizes the DIP Financing Agreement and the DIP Loan on a final basis; and
- (g) Find that notice of the Interim Hearing is sufficient and adequate with respect to the Noticed Parties (defined below) pursuant to Bankruptcy Rules 2002 and 4001 and the Local Rules of this Court, and that no other or further notice is required.

Basis for Relief Requested

A. Approval of the DIP Facility is Essential to the Debtors’ Ability to Successfully Reorganize

18. It is essential to the success of the Chapter 11 Cases that the Debtors immediately obtain access to sufficient postpetition financing. The Debtors’ continuing viability, the avoidance of business interruption, the preservation of estate assets and the Debtors’ ability to conduct a successful sale process all depend heavily upon the approval of the DIP Facility and the related actions requested herein.

19. For the following reasons, the Debtors respectfully submit that they have satisfied the standards applicable for approval of the DIP Facility.

B. The DIP Facility Should Be Approved Under Section 364 of the Bankruptcy Code

20. The Debtors propose to obtain financing under the DIP Facility by providing security interests and other liens as set forth above pursuant to section 364(c) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit

allowable under section 503(b)(1) of the [the Bankruptcy Code].” 11 U.S.C. § 364(c). Indeed, section 364(c) financing is appropriate when a debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. *See In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (“The Court ‘may not approve any credit transaction under subsection (c) [of Section 364] unless the debtor demonstrates that it has attempted, but failed, to obtain unsecured credit under section 364(a) or (b).’”) (alteration in original) (quoting *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990)); *In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (stating that “[c]ourts have generally deferred to a debtor’s business judgment in granting section 364 financing”); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (determining that secured credit under section 364(e)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

21. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) [The debtor is] unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A);
- (b) The credit transaction is necessary to preserve the assets of the estate; and
- (c) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

L.A. Dodgers, 457 B.R. at 312 (citing *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988); *see also Ames Dep’t Stores*, 115 B.R. at 37-39. The elements of this test are satisfied here.

22. During the prepetition period, the Debtors, both directly and through their advisors, endeavored to identify potential sources of financing. Based on those discussions with potential lenders, the Debtors have determined that adequate financing on an unsecured basis is

not available. Without postpetition financing, the Debtors would not be able to operate their businesses as a going concern, which would significantly impair the value of the Debtors' estates to the detriment of all stakeholders. Furthermore, by obtaining postpetition financing, the Debtors will be in a position to maximize the value of their assets for the benefit of all stakeholders. Finally, the terms of the DIP Facility are fair, reasonable and adequate given the Debtors' circumstances, all as more fully set forth below.

1. No Adequate Alternative to the DIP Facility is Currently Available.

23. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by section 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). *See also In re Phoenix Steel Corp.*, 39 B.R. 219, 222 n.9 (D. Del. 1984) (stating that the debtor must show that it is "unable to obtain such credit otherwise"); *YL West 87th Holdings*, 423 B.R. at 441 ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *In re Gen. Growth Props., Inc.*, 412 B.R. 122, 125 (Bankr. S.D.N.Y. 2009) (debtor has an obligation to make "reasonable efforts, under the circumstances . . . to obtain [unsecured financing], in the ordinary course of business or otherwise").

24. In the days and weeks prior to the commencement of these Chapter 11 Cases, the Debtors explored alternative financing from a number of potential lenders and from a variety of financial institutions. Prior to the Petition Date, the Debtors and their financial advisors surveyed various sources of prospective postpetition financing by contacting fourteen (14) lending institutions. Despite diligent efforts, the Debtors have been unable to find a lender

willing to extend credit on an unsecured basis or on terms more favorable than those proposed under the DIP Facility.

25. Together with its counsel and financial advisors, the Debtors considered available financing options and determined in their business judgment that the terms set forth in the DIP Financing Agreement are the most favorable to and in the best interests of the Debtors' estates and creditors. Accordingly, the Debtors have firmly established the requirement of section 364(c) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors.

2. The DIP Facility Is Necessary to Preserve Estate Assets and Is an Exercise of the Debtors' Sound Business Judgment.

26. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., L.A. Dodgers*, 457 B.R. at 313 (stating that "courts will almost always defer to the business judgment of a debtor in the selection of the lender"); *Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *Ames Dep't Stores*, 115 B.R. at 38 (noting that other decisions under section 364 find that financing decisions reflect a debtor's business judgment). Generally, the business judgment standard requires that the court "not second-guess a business decision, so long as corporate management exercised a minimum level of care in arriving at the decision." *L.A. Dodgers*, 457 B.R. at 313; *see also In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (holding that "discretion to act with regard to business planning activities is at the heart of the debtor's power") (citations omitted).

27. To determine whether the business judgment standard is met, a court is “required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006). The Debtors’ decision to enter into the DIP Facility satisfies this standard.

28. As discussed above, the DIP Facility is necessary to preserve the value of the Debtors’ estates. Specifically, the DIP Facility will allow the Debtors to conduct their operations and administer the Chapter 11 Cases. Without the benefit of the DIP Facility, the Debtors will suffer irreparable harm as they will be unable to sustain operations and fund essential business expenses necessary to conduct a successful sale process in chapter 11. Thus, approval of borrowing under the DIP Facility is crucial to maximizing the value of the Debtors’ estates for the benefit of all stakeholders.

3. The DIP Facility Terms Are Fair, Reasonable, and Appropriate.

29. The terms as proposed under the DIP Financing Agreement and the other DIP Loan Documents are fair, reasonable and adequate under the circumstances.

30. The Debtors made concerted, good-faith efforts to obtain credit on the most favorable terms available in the market. Against this backdrop, the Debtors and their advisors carefully evaluated the proposed financing offered by the DIP Facility and engaged in arm’s length negotiations with the proposed DIP Agent and DIP Lenders. Ultimately, the Debtors, exercising their sound business judgment, agreed to the DIP Facility as the proposal best suited to the Debtors’ needs.

31. To further illustrate that the terms are fair, reasonable and adequate, the DIP Financing Agreement provides that the security interests and administrative expense claims granted to the proposed DIP Lenders will be subject to the Carve-Out described above. In *Ames Department Stores*, the court found that such “carve-outs” are not only reasonable, but are

necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. *See* 115 B.R. at 40; *accord Gen. Growth*, 412 B.R. at 125. Courts in this district have authorized postpetition financing agreements between a debtor and DIP lender, under which the lender's security interests and/or administrative expenses claims subject were subject to similar "carve-outs." *See, e.g., In re Golfsmith Int'l Holdings, Inc.*, No. 16-12033 (LSS) (Bankr. D. Del. Oct. 17, 2016); *In re Pacific Sunwear of Cal., Inc.* No. 16-10882 (LSS) (Bankr. D. Del. May 24, 2016); *In re Seventy Seven Fin. Inc.*, No. 16-11409 (LSS) (Bankr. D. Del. June 28, 2016); *In re Deb Stores Holding LLC*, No. 14-12676 (KG) (Bankr. D. Del. Jan. 7, 2015).

32. Likewise, the various fees, charges, and other provisions required under the DIP Facility are customary, and approval thereof is appropriate. All of the fees and charges were the subject of substantial arm's length negotiation. Absent approval and payment of such fees and charges, the proposed DIP Lenders could not make the Loans. Courts have authorized these types of material lender incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy Code. *See, e.g., In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (9th Cir. B.A.P. 1992) (authorizing credit arrangement under section 364, including a lender "enhancement fee"); *In re TSAWD Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. May 3, 2016); *In re RCS Capital Corp.*, No. 16-10223 (MFW) (Bankr. D. Del. Feb. 3, 2016); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Oct. 28, 2015); *In re Coda Holdings, Inc.*, No. 13-11153 (CSS) (Bankr. D. Del. May 29, 2013).

33. Accordingly, the terms of the DIP Facility are fair, reasonable and adequate, and the proposed DIP Agent and DIP Lenders should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of such facility.

C. Authority to Use Cash Collateral

34. Section 363 of the Bankruptcy Code governs the debtors' use of property of the estate. Section 363(c)(1) of the Bankruptcy Code provides that

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

11 U.S.C. § 363(c)(1). Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to "cash collateral" to the general grant of authority to use property of the estate in the ordinary course set forth in section 363 of the Bankruptcy Code. Specifically, a trustee or debtor-in-possession may not use, sell, or lease "cash collateral" under subsection (c)(1) unless:

(A) each entity that has an interest in such collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

35. During the ordinary course of operations, the Debtors generate cash from the use of the DIP Collateral. As of the Petition Date, the Debtors held only a *de minimis* amount of unrestricted cash. The Debtors need the proposed DIP Facility and the use of Cash Collateral in order to fund the ordinary course of their business operations and to administer the Chapter 11 Cases while they pursue the prompt consummation of a value-maximizing bankruptcy sale. As the DIP Facility is contingent upon the Debtors obtaining approval to use Cash Collateral, it is imperative that the Debtors obtain authority to use Cash Collateral subject to the terms of this Motion. Accordingly, to obtain the financing under the DIP Facility and to avoid immediate and

irreparable harm to the Debtors' business operations and their estates, the Debtors have an immediate need for authority to use Cash Collateral.

36. The Debtors submit that, under these circumstances, their request to use Cash Collateral should be approved. The Debtors expect that certain of the only parties with a material interest in the prepetition Cash Collateral—namely certain of the Pre-Petition Secured Lenders—will consent to the use of Cash Collateral provided that the relief requested herein is granted. Further, to the extent a Pre-Petition Secured Lender has not consented, the Debtors—through the DIP Facility and the Interim Order—have provided all such parties with an adequate protection package, which is fair and reasonable under the circumstances. Absent such authority, the Debtors would not have access to any additional liquidity, which would imperil their ability to continue operations and could substantially impair the value of their assets as they attempt to deleverage their balance sheet during the Chapter 11 Cases. On the other hand, allowing the Debtors to use Cash Collateral and, by extension, sustain their business operations will permit the Debtors to implement a bankruptcy strategy that will preserve and maintain value and yield the highest recovery for their estates and their creditors. Accordingly, the proposed adequate protection is fair, reasonable, and sufficient to justify the requirements of sections 363(c)(2) and (3) of the Bankruptcy Code.

Interim Approval Is Appropriate

37. Bankruptcy Rules 4001(b) and 4001(c)(2) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on the motion and authorize the

obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed. R. Bankr. P. 4001(c)(2).

38. The Debtors request that the Court authorize them, on an interim basis pending the Final Hearing, to borrow DIP Revolving Loans under the DIP Facility in an amount up to \$14 million inclusive of a subfacility of \$2 million to cash collateralize the issuance of letters of credit. As discussed above, this relief will enable the Debtors to operate their businesses in a manner that will permit them to preserve and maximize value and thereby avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing. Absent interim approval of this interim borrowing under the DIP Facility, the Debtors' businesses would suffer immediate and irreparable harm.

Final Hearing

39. The Debtors further respectfully request that the Court set a date and time for the Final Hearing to consider the entry of a Final Order approving the relief sought in this Motion, including without limitation final court approval of the Debtors' borrowings of up to \$15 million inclusive of a subfacility of \$2 million to cash collateralize the issuance of letters of credit under the DIP Facility. To avoid a potential event of default that will occur under the DIP Financing Agreement if the Final Order is not entered within thirty (30) days following the entry of the Interim Order, the Debtor's respectfully request that the Final Hearing occur no later than twenty-one (21) days after the date of entry of the Interim Order.

The Motion Satisfies Bankruptcy Rule 6003 and Local Rule 9013-1(m)

40. Pursuant to Rule 6003 of the Bankruptcy Rules, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within twenty-one (21) days after the

Petition Date “to the extent the relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003.

41. Pursuant to Local Rule 9013-1(m), requests for relief on less than seven (7) days’ notice and fewer than twenty one (21) days after the petition date are “confined to matters of a genuinely emergent nature required to preserve the assets of the estate and to maintain ongoing business operations and such other matters as the Court may determine appropriate.” Local Rule 9013-1(m)(ii).

42. The Debtors submit that for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors’ estates. Obtaining postpetition financing is essential to allowing the Debtors to continue to operate and preserve the value of their businesses for benefit of all stakeholders. The Debtors believe that failure to secure meaningful postpetition financing on favorable terms at the outset of the Chapter 11 Cases would irreparably harm their ability to maximize value for all stakeholders. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and Local Rule 9013-1(m).

Waiver of Bankruptcy Rule 6004(h)

43. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, immediately securing postpetition financing on favorable terms is crucial to preventing irreparable damage to the Debtors’ operations and the value of the Debtors’ businesses as the Debtors make efforts to successfully reorganize. Accordingly, the Debtors submit that ample

cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent it would apply.

Notice

44. Notice of this Motion shall be provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for the proposed DIP Agent; (iii) counsel to the prepetition secured lenders; (iv) those parties listed on the list of creditors holding the twenty (20) largest unsecured claims against the Debtors (on a consolidated basis), as identified in their chapter 11 petitions and (v) the parties required to be served pursuant to Local Rule 9013-1(m)(iii) (collectively, the “Noticed Parties”). As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

45. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court: (i) consider the Motion on an expedited basis; (ii) grant an Interim Order, substantially in the form attached as **Exhibit 1** hereto, authorizing the Debtors to obtain the postpetition financing described herein on an interim basis and setting the Motion for a final hearing; and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: June 12, 2017
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

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Proposed Counsel for the Debtors

EXHIBIT 1

Proposed Interim Order

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

)	Chapter 11
In re:)	
CST INDUSTRIES HOLDINGS INC., <i>et al.</i> , ¹)	Case No. 17-11292 (BLS)
Debtors.)	Joint Administration Pending
)	Re: Docket No. ____

[PROPOSED] INTERIM ORDER (I) AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF²

Upon the motion dated June 12, 2017 (the "Motion"), seeking entry of an interim order (this "Interim Order"), *inter alia*,

- (a) authorizing CST Industries, Inc. ("CST Industries," and together with CST Industries Holdings Inc. and CST Power and Construction, Inc., "Debtors") to obtain secured postpetition superpriority financing (the "DIP Facility") on an interim and final basis from BNP Paribas ("BNP") in its capacity as Administrative Agent (in such capacity, "DIP Agent") and certain lenders as debtor-in-possession financing lenders (in such capacity, the "DIP Lenders") pursuant to the terms and conditions of that certain "Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement," dated as of [June 14, 2017], by and among CST Industries, the DIP Agent, and the DIP Lenders, attached hereto as **Exhibit A** (as amended, supplemented, restated or otherwise modified from time to time, the "DIP Credit Agreement," and together with the other documents, agreements and instruments delivered pursuant thereto or executed or filed in connection therewith, all as may be requested by the DIP Agent (as the same may

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: CST Industries Holdings Inc. (4872), CST Industries, Inc. (9554), CST Power & Construction, Inc. (9480). The Debtors' headquarters are located at: 903 E. 104th Street, Suite 900, Kansas City, Missouri 64131.

² This Proposed Interim Order remains subject to (i) ongoing negotiation, review, and revision by the proposed DIP Agent and DIP Lenders and (ii) the proposed DIP Lenders obtaining credit approval to enter the DIP Loan Documents. Nothing herein should be construed as a commitment by either the DIP Agent or the DIP Lenders to lend or take any other action with respect to the Debtors or the proposed DIP Facility.

be amended, supplemented, restated, or otherwise modified from time to time, the “DIP Loan Documents”);³

- (b) authorizing the Debtors to execute the DIP Loan Documents, and to perform such other acts as may be necessary or desirable in connection therewith;
- (c) granting to the DIP Agent for its own benefit and the benefit of the DIP Lenders a first priority security interest in and liens on all of the DIP Collateral (as defined below), subject only to Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement) and the Carve-Out (as defined below), to secure the DIP Facility and all obligations thereunder and under the DIP Loan Documents, as applicable, and a Final Order (as defined below), as applicable (collectively, the “DIP Loan Obligations”);
- (d) granting allowed superpriority administrative expense claims to the DIP Agent and the DIP Lenders;
- (e) authorizing the Debtors to use Cash Collateral (as defined below) (together with the DIP Facility, the “Postpetition Financing Arrangement”);
- (f) authorizing the Debtors to grant adequate protection to BNP in its capacity as prepetition Administrative Agent (in such capacity, the “Prepetition Agent”) and the prepetition lenders (in such capacity, the “Prepetition Lenders”⁴ together with the Prepetition Agent, the “Prepetition Secured Parties” and individually, a “Prepetition Secured Party”) under that certain Credit Agreement, as amended, supplemented or otherwise modified from time to time (the “Prepetition Credit Agreement”), dated as of May 23, 2012, among (i) Debtor, (ii) the Prepetition Agent, and (iii) the Prepetition Lenders (the Prepetition Credit Agreement, together with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, instruments, amendments, and any other agreements delivered pursuant thereto or in connection therewith, as each may be amended, supplemented, or otherwise modified from time to time, the “Prepetition Loan Documents”); and
- (g) scheduling a hearing (the “Final Hearing”), pursuant to Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to consider entry of a final order (the “Final Order”), *inter alia*, approving and authorizing the Postpetition Financing Arrangement (including, without limitation, the advance of the financing pursuant to this Interim Order) on a final basis pursuant to the DIP Loan Documents;

³ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the DIP Credit Agreement.

⁴ The Prepetition Lenders are: BNP; Ally Bank; Global Leveraged Capital Credit Opportunity Fund I; ING Capital LLC; Main Street Mezzanine Fund, LP; Main Street Capital II, LP; Main Street Capital Corporation; Cooperative Rabobank U.S.A. New York Branch; and OCM Mezzanine Fund II, L.P.

and the interim hearing on the Motion (the “Interim Hearing”) having been held on [June 13, 2017]; and the Final Hearing on the Motion having been scheduled for a date that is before the 28th day after the Petition Date; and upon all of the pleadings filed with the Court and the evidence proffered or adduced and representations of counsel at the Interim Hearing; and the Court having heard and resolved or overruled any and all objections to the relief requested in the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and upon the record herein; and that notices of the Motion and the Interim Hearing provided by the Debtors have complied with all applicable rules and prior orders of this Court; and after due deliberation thereon, and good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:⁵

A. Petition Date. On June 9, 2017 (the “Petition Date”), the Debtors each commenced a chapter 11 case (collectively, the “Chapter 11 Cases”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of creditors holding unsecured claims (the “Committee”) has been appointed in these Chapter 11 Cases.

B. Jurisdiction; Venue. The Court has jurisdiction over these Chapter 11 Cases, the parties, and the Debtors’ property pursuant to 28 U.S.C. § 1334. This is a core

⁵ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as applicable, pursuant to Bankruptcy Rule 7052.

proceeding pursuant to 28 U.S.C. § 157(b)(2)(D). The Court is a proper venue of these Chapter 11 Cases and the Motion under 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the Motion, the Interim Order and the Interim Hearing were provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) each Debtor's twenty largest unsecured creditors; (v) counsel to the DIP Agent, and (vii) all other known parties asserting a lien against the Debtors' assets; by telecopy, email, overnight courier and/or hand delivery. Because of the nature of the relief requested, no other or further notice of the relief requested in this Motion need be given.

D. Debtors' Acknowledgments and Stipulations. In requesting the Postpetition Financing Arrangement, and in exchange for and as a material inducement to BNP (as the DIP Agent), the DIP Lenders, and the Prepetition Secured Parties to agree to provide the Postpetition Financing Arrangement, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in Paragraph 13 herein, as follows:

(i) CST Industries and the Prepetition Secured Parties entered into that certain Prepetition Credit Agreement pursuant to which CST Industries obtained secured financing from the Prepetition Secured Parties, in the aggregate original principal amount of \$85 million in term loans and \$25 million in a revolving credit facility, of which not less than approximately \$56 million in principal (exclusive of certain accrued amounts) is outstanding as of the Petition Date. For purposes of this Interim Order, the term "Prepetition Obligations" shall mean the Obligations (as such term is defined in the Prepetition Credit Agreement) owed to the Prepetition Secured Parties under the Prepetition Loan Documents;

(ii) the Prepetition Obligations of CST Industries are secured by first priority liens granted to the Prepetition Secured Parties on all, or substantially all, of CST Industries' assets subject to any existing non-avoidable liens (including Cash Collateral, as defined below) as set forth on the Prepetition Loan Documents, whether then owned or existing or thereafter acquired (the "Prepetition Liens"). "Collateral" as defined in the Prepetition Credit Agreement granted or pledged pursuant to any of the Prepetition Loan Documents shall be collectively referred to as the "Prepetition Collateral";

(iii) All Prepetition Obligations of CST Industries under the Prepetition Loan Documents are guaranteed by CST Industries Holdings Inc., a Debtor and the parent company of CST Industries, and by CST Power and Construction, Inc., a Debtor and subsidiary of CST Industries;

(iv) as of the Petition Date, (a) the approximate aggregate amount of principal owed under the Prepetition Loan Documents is not less than a \$56 million, which does not include interest, fees, expenses and other amounts which are chargeable or otherwise reimbursable under the Prepetition Loan Documents, (b) all of the Prepetition Obligations are unconditionally owing by the Debtors to the Prepetition Secured Parties as set forth in the Prepetition Loan Documents, and (c) the Prepetition Obligations are not subject to any avoidance, reductions, set-off, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses or any other challenges under the Bankruptcy Code or any applicable law or regulation by any person or entity, except as set forth in Paragraph 13 herein;

(v) the Prepetition Liens constitute valid, binding, enforceable, and perfected liens with priority over any and all other liens and are not subject to any challenge or defense,

including, without limitation, respectively, avoidance, reductions, recharacterization, subordination (whether equitable, contractual or otherwise), claims, counterclaims, cross-claims, offsets, defenses or any other challenges under the Bankruptcy Code or any applicable law or regulation by any person or entity, except as set forth in Paragraph 13 herein;

(vi) the Debtors have waived, discharged and released any right they may have to challenge the Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral, and to assert any offsets, defenses, claims, objections, challenges, causes of action and/or choses of action against the Prepetition Secured Parties with respect to the Prepetition Obligations, the Prepetition Liens, and the Prepetition Collateral;

(vii) any payments made on account of the Prepetition Obligations before the Petition Date were (a) payments out of the Prepetition Collateral, and/or (b) made in the ordinary course of business and did not diminish any property otherwise available for distribution to unsecured creditors;

(viii) all of the Debtors' cash, including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral (as defined below);

(ix) None of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties is a control person or insider of the Debtor by virtue of any of the actions taken by them in respect of or in connection with the Postpetition Financing Arrangement or the Prepetition Obligations;

(x) Except as otherwise set forth herein, until such time as all DIP Loan Obligations are indefeasibly paid in full in cash, the Debtors shall not in any way prime or seek to prime (or otherwise cause to be subordinated in any way) the liens provided to the DIP Agent

or the DIP Lenders by offering a subsequent or other lender or any party-in-interest a superior or *pari passu* lien or claim with respect to the DIP Collateral pursuant to section 364(d) of the Bankruptcy Code, or otherwise;

(xi) until such time as all DIP Loan Obligations are indefeasibly paid in full in cash, the Debtors shall not in any way or at any time seek allowance of any administrative expense claim against the Debtors of any kind or nature whatsoever, including, without limitation, claims for any administrative expenses of the kind specified in, or arising or ordered under sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546(c), 552(b), 726, 1113, and 1114 of the Bankruptcy Code, that is superior to or *pari passu* with the DIP Superpriority Claims (as defined below) provided herein, except with respect to the Carve-Out; and

(xii) the Prepetition Secured Parties are entitled, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any diminution in the value of the Prepetition Collateral occurring from and after the Petition Date (“Diminution”), in exchange for (a) the incurrence of the DIP Loan Obligations, (b) the use of Cash Collateral, (c) the granting of the DIP Liens and the DIP Superpriority Claims, (d) the subordination of the Prepetition Obligations to the Carve-Out, and (e) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

E. Cash Collateral. For purposes of this Interim Order, the term “Cash Collateral” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which a Prepetition Secured Party has a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), subject

to any allowed Permitted Encumbrance (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement) in such Cash Collateral, and shall include, without limitation:

(i) all cash proceeds arising from the collection, sale, lease or other disposition, use or conversion of any property, insurance policies, or in or on which a Prepetition Secured Party has a lien or a replacement lien, whether as part of the Prepetition Collateral or pursuant to an order of the Court or applicable law or otherwise, and whether such property has been converted to cash, existed as of the commencement of these Chapter 11 Cases, or arose or was generated thereafter;

(ii) all of the respective deposits, refund claims and rights in retainers of the Debtors on which a Prepetition Secured Party has a lien or replacement lien, whether as part of the Prepetition Collateral or pursuant to an order of the Court or applicable law or otherwise; and

(iii) the proceeds of any sale of DIP Collateral or Prepetition Collateral in connection with any sale consummated before or after the entry of the Final Order.

F. Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361, 363(e), and 364(c)(2) & (c)(3) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, to the extent of any Diminution, resulting from (a) the use of Cash Collateral, (b) the subordination of the Prepetition Obligations to the Carve-Out, and (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

G. Purpose and Necessity of Financing. As provided for in the Motion, the Debtors required the financing under the DIP Facility (the "DIP Loans") (i) to maximize and preserve the value of their businesses pending the sale of substantially all of their assets, and to satisfy payroll obligations and other necessary working capital and general corporate purposes of

the Debtors consistent with the terms set forth in the DIP Loan Documents and the Initial Budget (as defined below), (ii) to pay fees and expenses related to the DIP Loan Documents and necessary and reasonable fees incurred in connection with these Chapter 11 Cases, and (iii) for such other purposes as set forth in the DIP Loan Documents. If the Debtors do not obtain authorization to borrow under the DIP Loan Documents, the Debtors, and their estates, will suffer immediate and irreparable harm. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under section 503 of the Bankruptcy Code, or other sufficient financing under sections 364(c) or (d) of the Bankruptcy Code, on equal or more favorable terms than those set forth in the DIP Loan Documents, based on the totality of the circumstances. A loan facility in the amount provided by the DIP Loan Documents is not available to the Debtors without granting the DIP Agent and the DIP Lenders superpriority claims, liens, and security interests, pursuant to section 364 of the Bankruptcy Code. After considering all alternatives, the Debtors have concluded, in the exercise of their sound business judgment, that the Postpetition Financing Arrangement, including, without limitation, the DIP Facility, represents the best financing available to the Debtors at this time.

H. Good and Sufficient Cause Shown. Good and sufficient cause has been shown for entry of this Interim Order. The ability of the Debtors to obtain sufficient working capital and liquidity under the DIP Loan Documents is vital to the Debtors' estates and creditors. The liquidity to be provided under the DIP Loan Documents will enable the Debtors to preserve the value of their businesses pending a sale of substantially all of their assets. Among other things, entry of this Interim Order is necessary to maximize and stabilize the value of the Debtors' assets and to avoid immediate and irreparable harm to the Debtors and their estates, and, accordingly, is in the best interests of the Debtors, their estates and creditors.

I. Sections 506(c) And 552(b) Waivers. In light of (i) the subordination of the DIP Agent's and the DIP Lenders' liens and superpriority claims to the Carve-Out, and in exchange for and as a material inducement to the DIP Agent and the DIP Lenders to agree to provide the DIP Facility and (ii) the subordination of the Prepetition Secured Parties' liens and superpriority claims to the Carve-Out, the DIP Superpriority Claims, and the DIP Liens, and to permit the use of their Cash Collateral for payments made in accordance with the Initial Budget and the terms of this Interim Order, the DIP Agent and DIP Lenders and the Prepetition Secured Parties are, subject to entry of the Final Order, entitled to a waiver of (1) any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (2) the provisions of section 506(c) of the Bankruptcy Code.

J. Good Faith. The terms of the DIP Loan Documents are more favorable to the Debtors than those available from alternative sources. Based upon the record before the Court and subject to Paragraph 13 herein, the DIP Loan Documents have been negotiated in good faith and at arms'-length with the DIP Agent and the DIP Lenders. Any DIP Loans and other financial accommodations made to the Debtors by the DIP Agent and the DIP Lenders pursuant to the DIP Loan Documents and this Interim 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 section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Lenders shall be entitled to all protections and benefits afforded thereby.

K. Fair Consideration and Reasonably Equivalent Value. The Debtors have received and will receive fair consideration and reasonable value in exchange for access to the DIP Loans and all other financial accommodations provided under the DIP Loan Documents and this Interim Order. The terms of the DIP Loan Documents are fair and reasonable, reflect the

Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

L. No Roll-Up Intended or Authorized. Nothing in this Interim Order is intended, nor shall it be construed, as constituting a roll-up of any Prepetition Obligations owed to the Prepetition Secured Parties, nor shall it be construed as authorizing the Debtors to use the proceeds of advances under the DIP Credit Agreement to satisfy Prepetition Obligations owed to the Prepetition Secured Parties.

M. Immediate Entry of Interim Order. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). The permission granted herein to enter into the DIP Loan Documents and to obtain funds thereunder is necessary to avoid immediate and irreparable harm to the Debtors and their estates. This Court concludes that entry of this Interim Order is in the best interests of the Debtors' estates and creditors as their implementation will, among other things, allow for access to the financing necessary to sustain the continued operations of the Debtors and further enhance the Debtors' prospects for a successful sale of substantially all of their assets. Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Disposition. The Motion is granted on an interim basis on the terms set forth in herein. Any objection to the relief sought in the Motion that has not previously been withdrawn or resolved is hereby overruled on its merits.

AUTHORIZATION FOR DIP FINANCING AND USE OF CASH COLLATERAL

2. Authorization For DIP Financing And Use of Cash Collateral.

(a) The Debtors are hereby authorized, on an interim basis, to incur the DIP Loan Obligations immediately subject to the terms of this Interim Order, the Initial Budget or Modified Budget (defined herein), as applicable, and the DIP Loan Documents, in the aggregate during the period prior to the entry of the Final Order of up to the amounts provided in the Initial Budget, with the maximum amount to be borrowed after entry of this Interim Order not to exceed \$[14 million] inclusive of the \$2 million available to cash collateralize letters of credit, if any (the “Interim Commitment”). Available financing and advances under the DIP Loan Documents shall be made consistent with the terms set forth in the Initial Budget and the DIP Loan Documents, and provide for the payment of interest, fees, and expenses in accordance with this Interim Order and the DIP Loan Documents, and any other amounts required or allowed to be paid in accordance with the Interim Order, but only as and to the extent authorized by the Initial Budget or Modified Budget, as applicable, and the DIP Loan Documents. The Debtors are authorized to use Cash Collateral subject to and solely in accordance with the terms, conditions, and limitations set forth in this Interim Order, the Initial Budget or Modified Budget, as applicable, and the DIP Loan Documents, without further approval by the Court.

(b) Initial Budget. The Debtors have delivered to the DIP Agent a budget that has been approved in accordance with the DIP Loan Documents (the “Initial Budget”), a copy of which is attached hereto as Exhibit B. The Debtors shall provide to the DIP Agent updates to the Initial Budget and financial reporting with respect to the Debtors in accordance with the terms of the DIP Loan Documents. Funds borrowed under the DIP Loan Documents and DIP Collateral used under this Interim Order shall be used by the Debtors solely in accordance with this Interim Order, the Initial Budget or Modified Budget, as applicable, and the DIP Loan Documents. The consent of the DIP Agent and DIP Lenders to the Initial Budget or any

Modified Budget shall not be construed as a commitment to provide DIP Loans or to permit the use of Cash Collateral after the occurrence of an Event of Default, regardless of whether the aggregate funds shown on the Initial Budget or Modified Budget, as applicable, have been expended.

(c) The DIP Agent and the DIP Lenders (i) may assume that the Debtors will comply with the Initial Budget or Modified Budget, as applicable, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly or indirectly from the DIP Collateral or Prepetition Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Initial Budget or Modified Budget, as applicable, except the Carve-Out as may be permitted in the Final Order. All advances and extensions of credit shall be based upon the terms and conditions of the DIP Loan Documents, as the same may be adjusted from time to time in accordance with the DIP Loan Documents.

(d) To the extent any court order is entered directing disgorgement of any payments made by the Debtors to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, either before or after the Petition Date, all proceeds recovered by the Debtors' estates in connection with such order(s) directing disgorgement shall be applied first to repayment of the DIP Loan Obligations until the DIP Loan Obligations are indefeasibly paid in full in cash.

3. Authority to Execute and Deliver Necessary Documents.

(a) The Debtors are authorized to negotiate, prepare, enter into, and deliver the DIP Loan Documents, including, without limitation, to any UCC financing statements, pledge and security agreements, and mortgages or deeds of trust encumbering all of the DIP Collateral and securing all of the Debtors' obligations under the DIP Loan Documents, each as may be reasonably requested by the DIP Agent in accordance with the DIP Loan Documents.

(b) The Debtors are further authorized to negotiate, prepare, enter into and deliver the DIP Loan Documents subject to approval of the Court and entry of the Final Order.

(c) The Debtors are further authorized to perform all obligations and acts required of them under the DIP Loan Documents, and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for therein, and in this Interim Order.

4. Valid and Binding Obligations. All obligations under the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors and their successors and assigns, in accordance with their terms and the terms of this Interim Order, and no obligation, payment, transfer, or grant of a lien or security interest under the DIP Loan Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code) or subject to any avoidance, reduction, set off, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, or any other challenges under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. Amendments, Consents, Waivers, and Modifications. The Debtors, with the express prior written consent of the DIP Agent (not to be unreasonably withheld, delayed, or conditioned), may enter into any non-material amendments, consents, waivers or modifications to the DIP Loan Documents without the need for further notice and hearing or any order of this Court. Material amendments, consents, waivers, and modifications of the DIP Loan Documents shall require the express prior written consent of the DIP Agent (not to be unreasonably withheld, delayed, or conditioned) with respect to the DIP Collateral, including any enforcement

of remedies in respect of, or collection from, the DIP Collateral. Any material modification or amendment to the DIP Loan Documents (including without limitation to the definition of Permitted Encumbrances) shall also only be permitted pursuant to an order of this Court, after being submitted to this Court upon notice to counsel for any Committee, the U.S. Trustee and the DIP Agent, any party requesting notice under Bankruptcy Rule 2002, and all parties affected by the modification or amendment; provided, that any forbearance from, or waiver of, (a) a breach by the Debtors of a covenant, representation or any other agreement or (b) a default or an Event of Default, in each case under the DIP Loan Documents, shall not require an order of this Court. Modifications or extensions of the Initial Budget shall be made in accordance with the DIP Loan Documents.

DIP LIENS AND DIP SUPERPRIORITY CLAIMS

6. Priority and Liens.

(a) To secure the DIP Loan Obligations, the DIP Agent for its own benefit and for the benefit of the DIP Lenders, is hereby granted, pursuant to sections 364(c)(2), 364(c)(3), and 364(d)(1), as applicable, valid, enforceable, nonavoidable, and fully perfected liens (including priming liens) and security interests (collectively, the “DIP Liens”) in the Collateral (as that term is defined in the DIP Credit Agreement), which, subject to the DIP Loan Documents, shall include, without limitation, all of the property, assets or interests in property or assets of the Debtors, and all “property of the estate” (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible or intangible or mixed, now existing or hereafter acquired or created, including, without limitation, all of the Debtors’ now owned or hereafter acquired right title, and interest in and to all cash, accounts, accounts receivable, inventory, property, plant and equipment, real estate, leaseholds, rolling

stock, vehicles, trailers, all intercompany claims, all claims, and causes of action of the Debtors or their estates (including, without limitation, all commercial tort claims of every kind and description) and any and all proceeds therefrom, any and all proceeds arising from insurance policies, all intellectual property, and the equity interests of the Debtors, which for the avoidance of doubt, shall include, without limiting the generality of the foregoing, all assets of the Debtors that are secured pursuant to the Prepetition Loan Documents, and all other property and assets including, without limitation, Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, offspring and profits of any of the collateral described above, but expressly excluding any avoidance actions and other causes of action arising under chapter 5 of the Bankruptcy Code (collectively, the “DIP Collateral”), subject only to (i) the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement), and (ii) the Carve-Out.

(b) Notwithstanding anything to the contrary in this Interim Order or the DIP Loan Documents, the DIP Collateral shall not include (i) any claims and causes of action under chapter 5 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the “Avoidance Actions”); (ii) any asset or interest that is excluded from the Collateral under the Security Agreement (as that term is defined in the DIP Credit Agreement), including, without limitation, the Excluded Equity Interests (as that term is defined in the Security Agreement); or (iii) any proceeds of the foregoing, but only to the extent such proceeds would otherwise independently be excluded from the Collateral under the DIP Loan Documents; provided, however, that, upon entry of the Final Order granting such relief, the DIP Collateral shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement, or otherwise.

(c) The DIP Liens shall be effective immediately upon the entry of the Interim Order and shall not at any time be made subject or subordinated to, or made *pari passu* with, any other lien, security interest or claim existing as of the Petition Date, or created under sections 363 or 364(d) of the Bankruptcy Code or otherwise, other than (i) the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement), and (ii) the Carve-Out.

(d) The DIP Liens and the Replacement Liens shall not be subject to challenge and shall attach and become legal, valid, properly perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors, the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, guaranty agreements, security agreements, pledge agreements, federal or state notices, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, or other documents or the taking of possession or control of any DIP Collateral or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Prepetition Liens, the Replacement Liens, the Carve-Out, the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement). With respect to DIP Collateral that is also Prepetition Collateral, the Prepetition Agent shall act as the Prepetition Agent's bailee for purposes of perfection, if necessary. If the Prepetition Agent hereafter requests that the Debtors execute and deliver to the DIP Agent (and/or authorize the filing of) financing statements, guaranty agreements, security agreements, collateral assignments, mortgages or other instruments and documents considered by the DIP Agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens

or the Replacement Liens, the Debtors are hereby authorized to execute and deliver (and/or authorize the filing of) such instruments and documents or take any other such actions, and the DIP Agent is hereby authorized to file or record such documents in its discretion, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or Replacement Liens. The DIP Agent may file, record or present a certified copy of this Interim Order with any filing or recording office and, in such event, the subject filing or recording office is authorized and directed to accept, file or record such certified copy of this Interim Order in accordance with applicable law; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or Replacement Liens.

7. DIP Superpriority Claims. All DIP Loan Obligations shall hereby constitute allowed superpriority administrative expense claims (the “DIP Superpriority Claims”) pursuant to section 364 of the Bankruptcy Code in each of the Debtor’s Chapter 11 Cases and in any successor case under the Bankruptcy Code (including any case or cases under chapter 7 of the Bankruptcy Code, the “Successor Cases”), having priority over any and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546(c), 726, 1113, and 1114 and any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtors. The DIP

Superpriority Claims granted in this Paragraph 7 shall be subject and subordinate in priority of payment only to payment of the Carve-Out and any Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement). Except as set forth herein, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases or in any Successor Cases. The DIP Superpriority Claims shall be senior in all respects to any other superpriority claims granted in these Chapter 11 Cases

ADEQUATE PROTECTION

8. Adequate Protection for Prepetition Secured Parties. As adequate protection in respect of, and as consideration for, (a) the use of Cash Collateral, (b) the subordination of the Prepetition Obligations to the Carve-Out, (c) any other diminution in the value of the Prepetition Collateral, and (d) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, the Prepetition Secured Parties are hereby granted the following (subparagraphs (a) through (h) below shall be referred to collectively as the “Prepetition Adequate Protection Rights”):

(a) Replacement Liens. To secure the Adequate Protection Claims (defined below), the Prepetition Agent for its own benefit and the benefit of the Prepetition Lenders is hereby granted (effective and perfected upon the date of entry of the Interim Order and without the necessity of execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments) valid, perfected, postpetition security interests in and liens (the “Replacement Liens”) in all of the DIP Collateral; provided, however, that, notwithstanding anything to the contrary, the Replacement Liens shall only be and remain subject and subordinate to (i) the DIP Liens and/or payment of any DIP Loan Obligations on

account thereof, (ii) the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement), and (iii) the Carve-Out.

(b) Adequate Protection Superpriority Claims. As further adequate protection, the Prepetition Agent for its own benefit and the benefit of the Prepetition Lenders is hereby granted superpriority claims, for any Diminution, which claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546(c), 552(b), 726, 1113 and 1114 and any other provision of the Bankruptcy Code (the "Adequate Protection Claims"); provided, however, that, notwithstanding anything to the contrary, the Adequate Protection Claims shall only be and remain subject and subordinate to (i) the DIP Superpriority Claims and (ii) the Carve-Out.

(c) Adequate Protection Payments. From and after the Petition Date, the Debtors shall, (i) continue to pay, as and when due, all (x) interest (at a rate equal to the sum of Base Rate (as defined in the Prepetition Credit Agreement) plus 1.00% as adequate protection) and (y), subject to Sections 2.3 and 10.2 of the Prepetition Credit Agreement, fees and expenses payable as required in the Prepetition Loan Documents, including, without limitation, reasonable and documented legal and financial advisory fees and expenses of any Prepetition Secured Party, and (ii) subject to Section 10.2 of the Prepetition Credit Agreement and without duplication of clause (i)(y) above, pay all fees and out-of-pocket costs and expenses of any Prepetition Secured Party (including reasonable and documented fees and expenses of legal advisors, financial advisors and investment banks) accrued or incurred in connection with the Chapter 11 Cases,

whether such amounts were accrued or incurred before or after the Petition Date (collectively, the “Adequate Protection Payments”), and to the extent that the Adequate Protection Payments are outstanding, such amounts shall be Adequate Protection Claims; provided, however, that any amounts for payable solely for legal, financial advisory, or other professionals’ fees and expenses under subparagraph 8(c)(i)(y) and 8(c)(ii) shall not be subject to allowance by this Court; provided, further however, that the Debtors, the U.S. Trustee or counsel for the Committee, if any, may seek a determination by this Court whether such fees and expenses are reasonable in the manner set forth in Paragraph 20.

(d) Consent to Adequate Protection. To the extent that the DIP Agent, any DIP Lender, and any Prepetition Secured Party has consented to the use of Cash Collateral and the Initial Budget or Modified Budget, as applicable, such consent (i) is conditioned upon the entry of this Interim Order; (ii) shall not be deemed to extend to any other replacement financing or debtor-in-possession financing other than the DIP Loans provided under the DIP Loan Documents; (iii) shall not be deemed a basis to deny or impair the Prepetition Secured Parties’ entitlement to the Prepetition Adequate Protection Rights; and (iv) shall be of no force and effect in the event that a Final Order is not entered or is vacated, modified, reversed, or altered in any respect or otherwise subject to appeal or other judicial review without the prior written consent of the DIP Agent or if the DIP Loan Documents and DIP Loans as set forth herein and therein are not approved by the Court.

(e) Right to Credit Bid. Subject to entry of the Final Order and the expiration of the Challenge Period, the DIP Agent, DIP Lenders, and Prepetition Secured Parties, as applicable, shall have the right to “credit bid” the respective claims it represents up to the full amount of (x) the Prepetition Obligations (but only as to the Prepetition Collateral) and

(y) the DIP Loan Obligations (but only as to the DIP Collateral), during any sale of all or any portion of the DIP Collateral or Prepetition Collateral, as applicable, including, without limitation, any sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan subject to confirmation under section 1129 of the Bankruptcy Code, and any bid submitted by the DIP Agent, DIP Lenders, and Prepetition Secured Parties shall be deemed a “qualified bid” under any order approving bidding procedures. The DIP Agent, DIP Lenders, and Prepetition Secured Parties shall have the absolute right to assign, sell, or otherwise dispose of their respective rights to credit bid in connection with any credit bid in their respective capacities as DIP Agent, DIP Lenders, or Prepetition Secured Parties, as applicable, or any acquisition entity or joint venture formed in connection with such bid.

(f) Financial Reporting and Cooperation with Financial Advisor. The Debtors shall provide RPA, the financial advisor retained by the DIP Agent and Prepetition Agent in these Chapter 11 Cases (“BNP Financial Advisor”), with the financial reporting and disclosures required under this Interim Order and the DIP Loan Documents and shall provide the same information to counsel for the Committee (after executing confidentiality agreements satisfactory to the Debtors) as they provide to BNP Financial Advisor.

(g) Further Adequate Protection. Subject to the Debtors’ rights to contest any such request, nothing in this Interim Order shall, or shall be deemed to, limit, abridge or otherwise affect the rights of the Prepetition Secured Parties to request at any time that the Court provide additional or further protection of their interests in the Prepetition Collateral (including the Cash Collateral), or to seek further or additional adequate protection in the event the adequate protection provided herein proves to be inadequate.

(h) Reservation of Rights. Nothing in this Interim Order shall, or shall be deemed to, limit, abridge or otherwise affect the rights of any third party from seeking adequate protection, after notice and a hearing, provided that such party holds rights in Cash Collateral or other property of the Debtors' estates. Moreover, nothing in this Interim Order shall, or shall be deemed to, limit, abridge or otherwise affect the rights of any party from pursuing any rights and remedies that may exist against non-debtor third-parties or assets not subject to the protections of the automatic stay pursuant to section 362 of the Bankruptcy Code in these Chapter 11 Cases; provided, however, that the Debtors shall not pay or otherwise provide any property or other value to any third party as adequate protection on account of any prepetition obligation or indebtedness other than as set forth in this Interim Order and the DIP Loan Documents.

9. Survival of DIP Liens, DIP Superpriority Claims, Replacement Liens and Adequate Protection Claims. The DIP Liens, DIP Superpriority Claims, Replacement Liens, and Adequate Protection Claims, and other rights and remedies granted under this Interim Order to the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, shall continue in this and any Successor Cases and shall be valid and enforceable against any trustee appointed in any Debtor's Chapter 11 Case or its Successor Cases and/or upon the dismissal of the Debtors' Chapter 11 Cases or any Successor Cases and such liens and security interests shall maintain their first priority, subject to the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement), as provided in this Interim Order until all the DIP Loan Obligations have been indefeasibly paid in full in cash and the DIP Agent's and the DIP Lenders commitments have been terminated in accordance with the DIP Loan Documents.

CARVE-OUT; RESTRICTIONS ON USE OF FUNDS

10. Carve-Out.

(a) All of the DIP Liens, the DIP Superpriority Claims, the Replacement Liens, the Adequate Protection Claims, the Prepetition Liens, and any other liens, claims, or interest of any person, shall be subject and subordinate to the Carve-Out. “Carve-Out” shall mean the sum of: (i) fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court (the “Case Administration Fees”), (ii) unpaid, reasonable professional fees and expenses (“Professional Fees”) payable to each professional retained by the Debtors (the “Debtor Professionals”) and the Committee (collectively with the Debtor Professionals, the “Estate Professionals”) that are incurred or accrued prior to the date of the occurrence of an Event of Default, but subject to the aggregate amount(s) allocated to each such professional in the Initial Budget, including investment banker’s fees payable on a sale of substantially all of the Debtors’ assets, and ultimately allowed by the Court pursuant to sections 328, 330, 331 and 503 of the Bankruptcy Code or any order of the Court (whenever such fees may be actually incurred prior to the date of termination as provided herein) and fees related to a Committee investigation, if any, and (iii) Case Administration Fees and Professional Fees paid on or after the date of the DIP Agent’s written notice to the Debtors of the occurrence of an Event of Default and the termination of the DIP Facility (the “Carve-Out Trigger Date”) in an aggregate amount not to exceed \$[500,000], subject to the aggregate amount(s) allocated to each professional in the Initial Budget (collectively, the “Carve-Out”). Subject to the immediately preceding sentence, the Debtors shall (A) fund the amount set forth in the Professional Fees section of the Initial Budget or Modified Budget, as applicable, to an account for payment of Case Administration and Professional Fees on a weekly basis, and in a manner consistent with

the Debtors' historical prepetition practices; and (B) be permitted to pay Case Administration Fees and Professional Fees allowed and payable under sections 328, 330, 331 and 503 of the Bankruptcy Code, in accordance with the Initial Budget or Modified Budget, as applicable, provided, however, that the DIP Agent and the DIP Lenders shall not be obligated to fund any amounts under the DIP Loan Documents or the Interim Order in excess of the Interim Commitment. Upon the occurrence of the Carve-Out Trigger Date, the payment of allowed Professional Fees incurred by each Estate Professional (excluding any incurred and unpaid professional fees and expenses of the DIP Agent and DIP Lenders payable pursuant to the Interim Order or the Final Order) in an aggregate amount not in excess of the amounts set forth for each such professional in the Initial Budget or the Modified Budget, as applicable, shall permanently reduce the Carve-Out on a dollar-for-dollar basis. The DIP Agent's and the DIP Lenders' obligations to fund or permit the use of their Cash Collateral to fund or to otherwise pay the Carve-Out shall be added to and made part of the DIP Loan Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law, as applicable.

(b) Expense Budgeting. Nothing contained in this Interim Order shall be construed: (i) to limit the ability of Debtor Professionals and the DIP Agent (subject to the terms of the DIP Loan Documents) to agree to additional budgeted amounts for Debtor Professional Fees in connection with the negotiation and consummation of a going concern sale of substantially all of the Debtors' assets or "Other" items as set forth in the Initial Budget or Modified Budget, as applicable; (ii) to exempt those persons hereafter receiving interim compensation payments or reimbursement of expenses pursuant to any such Bankruptcy Court-approved procedure from the applicable provisions of bankruptcy law, including the

requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and, if applicable, any subsequent order of this Court requiring that such payments be disgorged, or (iii) as consent to the allowance of any Professional Fees, and shall not affect any right of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to object to the reasonableness of such amounts.

11. Restrictions on Use of Funds.

(a) Notwithstanding anything to the contrary herein, no proceeds of the Postpetition Financing Arrangement, any DIP Collateral or Prepetition Collateral (including, without limitation, Cash Collateral) or any portion of the Carve-Out may be used to pay, any claims for services rendered by any of the professionals retained by the Debtors, any creditor or party in interest, any committee, any trustee appointed in these Chapter 11 Cases or any Successor Cases, or any other party to (i) request authorization to obtain postpetition loans or other financial accommodations pursuant to section 364 of the Bankruptcy Code, or otherwise, other than from the DIP Agent and DIP Lenders in accordance with the DIP Loan Documents; or (ii) subject to a budget of \$[100,000] in favor of only the Committee, if any, (the “Committee Investigation Cap”), investigate, assert, join, commence, support or prosecute any action or claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against the DIP Agent, the DIP Lenders, or any Prepetition Secured Party, or its respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (A) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code; (B) any action relating to any act, omission or aspect of the relationship between the DIP Agent, DIP Lenders, or Prepetition

Secured Parties, on the one hand, and the Debtors or any of their affiliates, on the other; (C) any action with respect to the validity and extent of the DIP Loan Obligations or the Prepetition Obligations, or the validity, extent, and priority of the DIP Liens, the Prepetition Liens, or the Replacement Liens; (D) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP Liens, the Prepetition Liens, or the Replacement Liens; (E) except to contest the occurrence of any Event of Default as permitted in Paragraph 13 hereof, any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the DIP Agent, DIP Lenders, or Prepetition Secured Parties in respect of their rights, liens, or security interests in the DIP Collateral, Cash Collateral, or the Prepetition Collateral; (F) pay any fees or similar amounts to any person who has proposed or may propose to purchase of the DIP Agent's, DIP Lenders', or Prepetition Secured Parties' interests in any of the Debtors without the prior written consent of the DIP Agent or Prepetition Agent, as applicable; or (H) use or seek to use Cash Collateral unless otherwise permitted under the Interim Order or the Final Order, as applicable, without the prior written consent of the DIP Agent or Prepetition Agent, as applicable; provided, however, that any amounts incurred by the Committee in excess of the Committee Investigation Cap shall not constitute an allowed administrative expense for purposes of section 1129 of the Bankruptcy Code

(b) Notwithstanding anything to the contrary herein, neither the Debtors nor any of their non-Debtor affiliates shall be entitled to commence a Challenge or any other action with respect to the Debtors' Stipulations (as defined herein).

(c) The Debtors shall not make any payments on account of any (i) creditor's prepetition claims, (ii) claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, (iii) management incentive plan, or (iv) claims or expenses arising under section 503 of

the Bankruptcy Code, except, in each case, in amounts and on terms and conditions that (A) are approved by order of the Court and (B) are expressly permitted by the terms of the DIP Credit Agreement and the Initial Budget or Modified Budget, as applicable.

12. Proceeds of Subsequent Financing or Sale. If at any time prior to the repayment in full of all DIP Loan Obligations, any Debtor, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt under section 364 of the Bankruptcy Code or otherwise in violation of the terms of the Interim Order or the Final Order, as applicable, or shall receive proceeds from a sale or other transfer pursuant to section 363(b) of the Bankruptcy Code, or from a sale or transfer of any DIP Collateral or Prepetition Collateral, after the satisfaction of liens that are senior to those of the DIP Agent, all of the proceeds derived from such credit, debt, sale, or transfer shall immediately be turned over to the DIP Agent up to an amount equal to the sum of all amounts outstanding under the DIP Loan Documents.

13. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

(a) The Debtors' acknowledgements and stipulations set forth in Paragraph D (the "Debtors' Stipulations") above shall be binding upon the Debtors in all circumstances upon entry of this Interim Order. The "Challenge Period" is the earlier of (x) with respect to any Committee, sixty (60) calendar days from the formation of the Committee or such later date as the DIP Agent agrees in writing to grant to the Committee, or (y) solely if no Committee is formed, with respect to other parties in interest with requisite standing other than the Debtors, sixty (60) calendar days following the date of entry of the Final Order, or such later date as the DIP Agent agrees in writing to grant to such parties in interest. A "Challenge" is: (A) a contested matter, adversary proceeding, or other action or "claim" (as defined in the Bankruptcy

Code) challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, or (B) a contested matter, adversary proceeding, or other action against the DIP Agent, DIP Lenders, or Prepetition Secured Parties (in any capacity) in connection with or related to (i) the Prepetition Obligations, (ii) the pre-petition business relationship between or conduct of the DIP Agent, DIP Lenders, or Prepetition Secured Parties with the Debtors, (iii) the actions or inactions of the DIP Agent, DIP Lenders, or Prepetition Secured Parties arising out of or related to the Prepetition Obligations or otherwise, including, without limitation, any claim against the DIP Agent, DIP Lenders, or Prepetition Secured Parties in the nature of an "equitable subordination," "lender liability," "deepening insolvency" or "control person" liability, (iv) any setoff, counterclaim, or defense to the Prepetition Obligations (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code) or (v) any avoidance of or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) to any transfer made by or on behalf of the Debtors to or for the benefit of DIP Agent, DIP Lenders, or Prepetition Secured Parties. The "Challenge Period Termination Date" is the earlier of either (i) if no Challenge is properly filed pursuant hereto, the calendar day immediately subsequent to the Challenge Period or (ii) with respect only to those parties who properly file a Challenge, such Challenge is fully and finally adjudicated by entry of a final, non-appealable order in such timely-filed contested matter, adversary proceeding, or other action. The Debtors' Stipulations shall be binding upon each other party in interest, including the Committee, if any, unless such Committee or any other party in interest other than the Debtors, commences a Challenge within the Challenge Period.

(b) Upon the occurrence of the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases, (i) all payments made to or for the

benefit of the DIP Agent, DIP Lenders, or Prepetition Secured Parties pursuant to, or otherwise authorized by, the Interim Order or the Final Order or otherwise (whether made prior to, on, or after the Petition Date) shall be infeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, or avoidance, (ii) any and all such Challenges by any party in interest shall be deemed to be forever released, waived, and barred, (iii) the Prepetition Obligations shall be deemed to be a fully allowed secured claim, which claim and liens shall be satisfied in full by the repayment of the Prepetition Obligations, and (iv) the Debtors' stipulations in Paragraph D and the releases in Paragraph 15 below shall be binding on all parties in interest, including the Committee or any trustee appointed in these Chapter 11 Cases or any Successor Cases.

14. Prohibition on Granting of Additional Liens and Interests. No liens, claims, interests or priority status having a lien or priority superior to or *pari passu* with that of the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Claims, or the Replacement Liens granted by this Interim Order, other than the (i) Carve-Out, (ii) the Permitted Encumbrances (and other liens permitted pursuant to subsection 7.2A of the DIP Credit Agreement), (iii) Adequate Protection Claims, (iv) the Replacement Liens, and (v) except as otherwise set forth herein, as applicable, shall be granted to any party while any portion of the DIP Loan Obligations or Prepetition Obligations remain outstanding, or any commitment under the DIP Loan Documents or Prepetition Loan Documents remains in effect, without the prior written consent of the DIP Agent.

15. Release. The release, discharge, waivers, settlements, compromises, and agreements set forth in this Paragraph 15 shall be deemed effective upon entry of the Final Order and subject only to the rights set forth in Paragraph 13 above. The Debtors forever and

irrevocably (i) release, discharge, and acquit the DIP Agent, the DIP Lenders, and each Prepetition Secured Party, and each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the “Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the DIP Agent, a DIP Lender, a Prepetition Secured Party, as the case may be, and the Debtors and the Debtors’ affiliates including any equitable subordination claims or defenses, with respect to or relating to the DIP Loan Obligations, the DIP Liens, the DIP Loan Documents, Prepetition Obligations, the Prepetition Liens, the Prepetition Loan Documents, and the Debtors’ attempt to restructure the Prepetition Obligations, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties; and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the DIP Liens, the DIP Loan Obligations, the Prepetition Obligations, and the Prepetition Liens. Notwithstanding anything in this Interim Order to the contrary, no release, consent, forbearance, stipulation, or admission provided for in this Interim Order (except for the right to receive Adequate Protection Payments as provided for herein) shall apply to or inure to the benefit of Oaktree Capital Management, The Northwestern Mutual Life Insurance Company, or any of such persons’ affiliates or subsidiaries, including, without limitation, OCM Mezzanine Fund II, L.P.

TERMINATION; REMEDIES; MODIFICATION OF AUTOMATIC STAY

16. Termination. Upon the termination of the DIP Facility following the occurrence of an “Event of Default” as that term is defined in the DIP Credit Agreement, the Commitment Termination Date (as defined in the DIP Credit Agreement), or default by any Debtor with respect to any of its obligations under this Interim Order (collectively, an “Event of Default”) unless waived in writing by the DIP Agent in accordance with the DIP Loan Documents (i) the Debtors’ authority to use Cash Collateral shall immediately and automatically terminate; (ii) the DIP Loan Obligations shall be immediately due and payable; and (iii) subject to Paragraph 17, section 362 of the Bankruptcy Code and any other applicable section of the Bankruptcy Code is automatically altered, lifted, and modified to the extent necessary to permit, BNP (in its capacity as DIP Agent and Prepetition Agent) may take immediate reasonable action to protect the DIP Collateral and Prepetition Collateral from harm, theft and/or dissipation.

17. Remedies and Stay Modification.

(a) Subject to subparagraphs 17(c) and 17(e) below, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified without the need for further Court order to permit the DIP Agent or Prepetition Agent, as applicable, upon the occurrence of an Event of Default, and without any interference from the Debtors or any other party interest but subject to three (3) business days’ prior written notice (which may be delivered by electronic mail) (the “Remedies Notice Period”) to the Debtors, their counsel, counsel to the Committee, if any, and counsel to the U.S. Trustee, to exercise all rights and remedies provided for in the DIP Loan Documents, this Interim Order, the Prepetition Loan Documents or under other applicable bankruptcy and non-bankruptcy law including, without limitation, (i) in the case of the DIP Agent and Prepetition Agent, take any actions reasonably calculated to preserve or

safeguard the DIP Collateral and/or the Prepetition Collateral or to prepare the DIP Collateral and/or the Prepetition Collateral for sale; (ii) in the case of the DIP Agent and Prepetition Agent, foreclose or otherwise enforce the DIP Liens, the Prepetition Liens and the Replacement Liens on any or all of the DIP Collateral and/or the Prepetition Collateral; and (iii) exercise any other default-related rights and remedies under the DIP Loan Documents or this Interim Order.

(b) Upon the occurrence and during the continuance of an Event of Default, the DIP Agent or DIP Lenders, as the case may be, may charge interest at the default rate set forth in and in accordance with the DIP Loan Documents (including Section 2.3 of the DIP Credit Agreement) without being subject to the Remedies Notice Period.

(c) The automatic stay of section 362(a) of the Bankruptcy Code, to the extent applicable, shall be deemed terminated without the necessity of any further action by the Court in the event that the Debtors, the Committee, if any, and/or the U.S. Trustee has not obtained an order from this Court to the contrary prior to the expiration of the Remedies Notice Period. The Debtors, the Committee, if any, and/or the U.S. Trustee shall have the burden of proof at any hearing on any request by them to re-impose or continue the automatic stay of section 362(a) of the Bankruptcy Code or to obtain any other injunctive relief.

(d) If any of the DIP Agent, DIP Lenders, or Prepetition Secured Parties is entitled, and has elected in accordance with the provisions hereof, to enforce its respective liens or security interests or exercise any other default-related remedies following expiration of the Remedies Notice Period, the Debtors (or any trustee appointed under chapter 11 or chapter 7) shall cooperate with the DIP Agent, DIP Lenders, or Prepetition Secured Parties, as applicable, in connection with such enforcement by, among other things, (i) providing at all reasonable times access to the Debtors' premises to representatives or agents of the DIP Agent, DIP Lenders, or

Prepetition Secured Parties, as applicable, (including any collateral liquidator or consultant), (ii) providing the DIP Agent, DIP Lenders, Prepetition Secured Parties, and their respective representatives or agents, as applicable, at all reasonable times access to the Debtors' books and records and any information or documents requested by the DIP Agent, DIP Lenders, or Prepetition Secured Parties, or their respective representatives, and (iii) taking reasonable steps to safeguard and protect the DIP Collateral, and the Debtors shall not otherwise interfere with or actively encourage others to interfere with the DIP Agent's, DIP Lenders', or Prepetition Secured Parties' enforcement of rights.

(e) Upon the occurrence and during the continuance of an Event of Default, (i) neither the DIP Agent nor DIP Lenders shall have any further obligation to provide financing under the DIP Loan Documents or to permit the continued use of Cash Collateral and (ii) the DIP Agent, subject to and in accordance with the DIP Loan Documents, is authorized to declare all or any portion of (x) the unpaid principal amount of and accrued interest on the DIP Loans, and (y) any and all other DIP Loan Obligations, to be, and same shall forthwith become, immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Debtor, and the obligation of each DIP Lender to make any DIP Loan shall thereupon terminate. For the avoidance of doubt, this subparagraph 17(e) shall not be subject to the Remedies Notice Period.

(f) Neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies set forth in this Paragraph 17 regardless of any change in circumstances.

(g) This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of the Interim Order or Final Order and relating to the application, re-imposition or continuance of the automatic stay of section 362(a) of the Bankruptcy Code or other injunctive relief requested.

MISCELLANEOUS

18. Limitation on Section 506(c) Claims. Subject to entry of the Final Order, provided that the DIP Agent has funded or authorized sufficient use of Cash Collateral to fund the Carve-Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Cases at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the DIP Agent, DIP Lenders, Prepetition Secured Parties, or any of their respective claims, the Carve-Out, the DIP Collateral or the Prepetition Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Agent or Prepetition Agent (as applicable). No action, inaction or acquiescence by the DIP Agent, DIP Lenders, or Prepetition Secured Parties shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the DIP Agent, DIP Lenders, or Prepetition Secured Parties (as applicable) or any of their respective claims, the Carve-Out, the DIP Collateral or the Prepetition Collateral.

19. Payment of DIP Agent's Expenses.

(a) All reasonable out-of-pocket costs and expenses of the DIP Agent including, without limitation, reasonable legal, accounting, collateral examination, financial advisory, monitoring, and appraisal fees and disbursements, fees and expenses of other consultants, indemnification and reimbursement obligations with respect to fees and expenses, and other out of pocket expenses, whether or not contained in the Initial Budget or Modified

Budget, as applicable, and without limitation to the dollar estimates contained in the Initial Budget or Modified Budget, as applicable, shall, subject to Paragraph 20, promptly be paid by the Debtors and without the necessity of filing fee or retention applications, including such amounts arising before or after the Petition Date. Any invoices for such costs and expenses: (i) may be redacted to protect privileged, confidential or proprietary information and (ii) shall not be required to contain individual time detail (provided that such invoices shall contain (except for financial advisors compensated on other than an hourly basis), at a minimum, summary data regarding hours worked by each timekeeper for the applicable professional and such timekeeper's hourly rates). Payment of such costs and expenses shall not be subject to allowance by this Court; provided, however, that the Debtors, the U.S. Trustee or counsel for the Committee, if any, may seek a determination by this Court whether such fees and expenses are reasonable in the manner set forth in Paragraph 20.

(b) DIP Loan Documentation and Related Expenses. Paragraph 20 notwithstanding, any and all fees and expenses (including, without limitation, legal and financial advisory fees and disbursements) incurred by the Prepetition Agent or DIP Agent, as the case may be, in connection with (i) negotiating, formulating, drafting, and otherwise documenting this Interim Order, any of the DIP Loan Documents, alternative financings, and any matters related to the foregoing and (ii) the commencement of the Chapter 11 Cases (including matters and amounts relating to any "first day" filings or related relief) including prepetition discussions and actions relating to any prepetition financing, including any defaults related thereto, other financing issues, and contingency preparations, shall be due, owing, and payable by the Debtors immediately upon the entry of this Interim Order. For the avoidance of doubt, the requirements

and other procedures set forth in Paragraph 20 shall not apply to any amounts subject to this subparagraph 19(b).

20. Payment of Certain Fees and Expenses. Under no circumstances shall professionals for the DIP Agent, the DIP Lenders, or any Prepetition Secured Party be required to comply with the U.S. Trustee fee guidelines or otherwise file a fee or retention application with the Court; provided, however, the Debtors shall provide to the U.S. Trustee and the Committee, if any, a copy of any invoices received from the DIP Agent, the DIP Lenders, or any Prepetition Secured Party for professional fees and expenses during the pendency of the Chapter 11 Cases or under this Interim Order. If the Debtors, U.S. Trustee or the Committee, if any, objects to the reasonableness of the invoices submitted by the DIP Agent, the DIP Lenders, or any Prepetition Secured Party, as applicable, and the parties cannot resolve such objection within ten (10) calendar days of receipt of such invoices, the Debtors, U.S. Trustee or the Committee, if any, as the case may be, shall file with the Court and serve on the DIP Agent, the DIP Lenders, or any Prepetition Secured Party, as applicable, a written objection (a "Fee Objection") limited to the issue of reasonableness of any such fees and expenses. The Debtors shall promptly pay, and/or the DIP Agent is hereby authorized to make an advance under the DIP Loan Documents to timely pay, the submitted invoices after the expiration of the ten (10) calendar day notice period if no Fee Objection is filed within such ten (10) calendar day period. If a Fee Objection is timely filed, the Debtors shall promptly pay, and/or the DIP Agent is hereby authorized to make an advance under the DIP Loan Documents to timely pay, the undisputed amount only of the invoice(s) that is the subject of such Fee Objection, and the Court shall have jurisdiction to determine the reasonableness of the disputed portion of such invoice(s) if the parties are unable to resolve the Fee Objection.

21. No Marshalling. The DIP Collateral, Prepetition Collateral, DIP Agent, DIP Lenders, and Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine. Without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of the DIP Collateral after an Event of Default.

(a) Equities of the Case Waiver. Subject to the entry of the Final Order, the DIP Agent, DIP Lenders, and Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against the DIP Agent, DIP Lender, or Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the DIP Collateral or the Prepetition Collateral.

22. Delivery of Documentation. The Debtors (and/or their legal or financial advisors) shall deliver to the DIP Agent, counsel to the DIP Agent, any financial advisors to the DIP Agent, members of the Committee (subject to execution of confidentiality agreements satisfactory to the Debtors) and any professionals retained by the Committee all financial reports, budgets, forecasts, and all other legal or financial documentation, pleadings, and/or filings that are required to be provided (by the Debtors and/or their legal or financial advisors) to the DIP Agent, the Committee (or its legal or financial advisors, subject to execution of confidentiality agreements satisfactory to the Debtor), or any other party pursuant to the DIP Loan Documents.

23. Access to Books and Records. The Debtors (and/or their legal and financial advisors) will (a) keep proper books, records and accounts in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to their

business and activities and (b) cooperate, consult with, and provide to the DIP Agent all such information as required or allowed under the DIP Loan Documents, the provisions of this Interim Order or that is afforded to the Committee, if any, and/or the Committee's respective legal or financial advisors.

24. DIP Agent and DIP Lenders Not Responsible Persons. In (a) making the decision to make the DIP Loans or consenting to the use of Cash Collateral; (b) administering the DIP Loans; (c) extending other financial accommodations to the Debtors under the DIP Loan Documents and this Interim Order; (d) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents; (e) administering the loans and financial accommodations extended under the Prepetition Loan Documents; (f) extending other financial accommodations to the Debtors under the Prepetition Loan Documents; and (g) making the decision to collect the indebtedness and obligations of the Debtors, neither the DIP Agent nor the DIP Lenders shall be considered to be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law.

25. Successors and Assigns. The DIP Loan Documents and the provisions of this Interim Order shall be binding upon the Debtors, the DIP Agent, the DIP Lenders, and each of their respective successors and assigns, and shall inure to the benefit of the Debtors, the DIP Agent, the DIP Lenders, and each of their respective successors and assigns including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a Debtor's case under any chapter of the Bankruptcy Code. The terms and provisions of this Interim Order shall also be binding on all of

the Debtors' creditors, equity holders, and all other parties in interest, including, but not limited to a trustee appointed under chapter 7 or chapter 11 of the Bankruptcy Code.

26. Binding Nature of Agreement. The DIP Loan Documents to which the Debtors are parties shall constitute legal, valid, and binding joint and several obligations of any Debtor party thereto, enforceable in accordance with its terms. The DIP Loan Documents have been or will be properly executed and delivered to the DIP Agent and DIP Lenders by the Debtors party thereto. Unless otherwise consented to in writing, the rights, remedies, powers, privileges, liens, and priorities of the DIP Agent and DIP Lenders provided for in this Interim Order, the DIP Loan Documents, or otherwise shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation or sale order), by any plan of reorganization or liquidation in these Chapter 11 Cases, by the dismissal or conversion of these Chapter 11 Cases or in any subsequent case under the Bankruptcy Code unless and until the DIP Loan Obligations have first been indefeasibly paid in full in cash and completely satisfied and the commitments terminated in accordance with the DIP Loan Documents.

27. Subsequent Reversal or Modification. This Interim Order is entered pursuant to section 364 of the Bankruptcy Code, and Bankruptcy Rules 4001(b) and (c), granting the DIP Agent and the DIP Lenders all protections and benefits afforded by section 364(e) of the Bankruptcy Code. Any financial accommodations made to the Debtors by the DIP Agent and the DIP Lenders pursuant to this Interim Order and the DIP Loan Documents shall be deemed to have been made by the DIP Agent and the DIP Lenders in good faith, as such term is used in section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, that action will not affect (i) the validity of any obligation, indebtedness or liability incurred hereunder by the Debtors to the DIP Agent and the

DIP Lenders, prior to the date of receipt by the DIP Agent and the DIP Lenders of written notice of the effective date of such action or (ii) the validity and enforceability of any lien or priority authorized or created under this Interim Order or pursuant to the DIP Loan Documents. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by a Debtor to the DIP Agent and the DIP Lenders prior to written notice to the DIP Agent and the DIP Lenders of the effective date of such action, shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and the DIP Lenders shall be entitled to all the rights, remedies, privileges, and benefits granted herein and in the DIP Loan Documents with respect to all such indebtedness, obligations or liability.

28. Collateral Rights. If any party who holds a lien or security interest in DIP Collateral or Prepetition Collateral that is junior and/or subordinate to the DIP Liens, the Replacement Liens or the Prepetition Liens in such DIP Collateral or Prepetition Collateral receives or is paid the proceeds of such DIP Collateral or Prepetition Collateral, or receives any other payment with respect thereto from any other source, prior to the indefeasible payment in full in cash and the complete satisfaction of (a) all DIP Loan Obligations under the DIP Loan Documents and termination of the Commitments in accordance with the DIP Loan Documents, and (b) the Prepetition Obligations under the Prepetition Loan Documents, such junior or subordinate lienholder shall be deemed to have received, and shall hold, the proceeds of any such DIP Collateral or Prepetition Collateral in trust for the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties and shall immediately turn over such proceeds to the DIP Agent for application to repay the DIP Loan Obligations and Prepetition Obligations in accordance with

the DIP Loan Documents, the Prepetition Loan Documents and this Interim Order until the DIP Loan Obligations and Prepetition Obligations are indefeasibly paid in full.

29. Injunction. Except as provided in the DIP Loan Documents, and this Interim Order, the Debtors shall be enjoined and prohibited from, at any time during these Chapter 11 Cases, granting liens on the DIP Collateral, the Prepetition Collateral or any portion thereof to any other parties, pursuant to section 364 of the Bankruptcy Code or otherwise, which liens are senior to or *pari passu* with the liens granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, except in accordance with the DIP Loan Documents, the Prepetition Loan Documents and this Interim Order.

30. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Agent and the DIP Lenders may have to bring or be heard on any matter brought before this Court.

31. Budget Modifications and Extension Periods. Subject to the occurrence of an Event of Default, the Postpetition Financing Arrangement shall be in effect and the budget annexed to this Interim Order shall constitute the Initial Budget or Modified Budget, as applicable, for the period set forth therein, subject to the entry of the Final Order. The Initial Budget may be modified from time to time in accordance with the DIP Loan Documents (the “Modified Budget”) without further order of the Court, [upon the filing of a copy of the Modified Budget with the Court].

32. Limits on Liability. Nothing in this Interim Order or in any of the DIP Loan Documents or any other documents related to this transaction shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties any liability for any claims arising from any and all activities by the

Debtors or any of their subsidiaries or affiliates in the operation of their businesses or in connection with their restructuring efforts.

33. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Loan Documents, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” “as set forth in” or “as more fully described in” the DIP Loan Documents (or words of similar import), the terms and provisions of this Interim Order shall govern.

34. No Third Party Beneficiary. Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

35. Survival. Except as otherwise provided herein, (a) the protections afforded under this Interim Order, and any actions taken pursuant thereto, shall survive the entry of an order (i) dismissing any of these Chapter 11 Cases or (ii) converting these Chapter 11 Cases into a case pursuant to chapter 7 of the Bankruptcy Code, and (b) the DIP Liens, the Replacement Liens, the DIP Superpriority Claims and the Adequate Protection Claims shall continue in these Chapter 11 Cases, in any such Successor Cases or after any such dismissal. Except as otherwise provided herein, the DIP Liens, the Replacement Liens, the DIP Superpriority Claims and the Adequate Protection Claims shall maintain their priorities as provided in this Interim Order and the DIP Loan Documents, and not be modified, altered or impaired in any way by any other financing, extension of credit, incurrence of indebtedness (except with respect to any additional financing to be provided by the DIP Agent and the DIP Lenders in accordance with the Interim Order), or any conversion of any of these Chapter 11 Cases into a case pursuant to chapter 7 of the Bankruptcy

Code or dismissal of these Chapter 11 Cases, or by any other act or omission until (i) all DIP Loan Obligations are indefeasibly paid in full in cash and completely satisfied, and the commitments under the DIP Loan Documents are terminated in accordance therewith, and (ii) the Prepetition Obligations have been or are deemed to have been satisfied in accordance with the Bankruptcy Code.

36. Reservation of Rights. The terms, conditions and provisions of this Interim Order are in addition to and without prejudice to the rights of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties to pursue any and all rights and remedies under the Bankruptcy Code, the Prepetition Loan Documents and DIP Loan Documents or any other applicable agreement or law, including, without limitation, rights to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Debtors' estates.

37. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Credit Agreement is scheduled for _____ __, 2017 at __:__0 __.m. (Eastern) before the Honorable _____, United States Bankruptcy Judge, __th Floor Courtroom, Room __, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, DE 19801. On or before _____ __, 2017, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with a copy of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for any Statutory Committee, if any. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections

with the Clerk of the Court no later than on _____, **2017 at 4:00 p.m. (Eastern)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors.

38. Immediate Binding Effect; Entry of Interim Order. This Interim Order shall not be stayed and shall be valid and fully effective immediately upon entry, notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Interim Order on the Court's docket in these Chapter 11 Cases.

39. Proofs of Claim. The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties upon approval of this Interim Order, and each Prepetition Secured Party shall be treated under section 502(a) of the Bankruptcy Code as if they had each filed a proof of claim for all such amounts. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in these Chapter 11 Cases or Successor Cases to the contrary, each Prepetition Secured Party, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in these Chapter 11 Cases or any Successor Cases for any claim allowed herein on behalf of such Prepetition Secured Party.

40. Interim Order Controls. To the extent that there is any inconsistency between any DIP Loan Document and the terms of this Interim Order, the Interim Order shall control.

41. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2017
Wilmington, Delaware

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

(Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement)

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

DATED AS OF JUNE [•], 2017

AMONG

CST INDUSTRIES, INC.,

**THE LENDERS LISTED HEREIN,¹
as Lenders,**

and

**BNP PARIBAS
as Administrative Agent**

¹ *Note: Subject to continuing negotiations and final credit approval by the prospective Lenders.*

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CST INDUSTRIES, INC.

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

This **SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT** is dated as of June [•], 2017 by and among **CST INDUSTRIES, INC.**, a Delaware corporation, as a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (“**Company**”), **THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO** (each individually referred to herein as a “**Lender**” and collectively as “**Lenders**”) and **BNP PARIBAS** (“**BNP Paribas**”), as administrative agent for Lenders (in such capacity, “**Administrative Agent**”). This Credit Agreement, as amended, supplemented, restated, amended and restated or otherwise modified from time to time, is hereinafter referred to as this “**Agreement**.”

R E C I T A L S

WHEREAS, on June 9, 2017 (the “**Petition Date**”) Company and each Guarantor (as defined below) filed a voluntary petition with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) initiating Chapter 11 Case Nos. 17-11292, 17-11293 and 17-11294 (collectively, the “**Chapter 11 Case**”);

WHEREAS, from and after the Petition Date, the Loan Parties (as defined below) will continue to operate their respective businesses and to manage their respective properties as debtors-in-possession pursuant to Sections 1107(a) and 1109 of the Bankruptcy Code;

WHEREAS, in connection with the Chapter 11 Case, Company has requested, and the Lenders have agreed to make available to Company, a senior secured priming and superpriority debtor-in-possession revolving credit facility in an aggregate principal amount of \$15,000,000, the proceeds of which will be used in accordance with the Budget (as defined below), including the Permitted Variances (as defined below);

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

Section 1. DEFINITIONS

1.1 Certain Defined Terms.

The following terms used in this Agreement shall have the following meanings:

“**Additional Mortgaged Property**” has the meaning assigned to that term in subsection 6.9A.

“**Additional Mortgages**” has the meaning assigned to that term in subsection 6.9A.

“Adequate Protection Payments” means the following payments: (i) payments of interest on Pre-Petition Senior Loan Obligations at a rate equal to the sum of the Base Rate (as defined in the Pre-Petition Senior Credit Agreement) plus 1.0% per annum; and (ii) payment of all reasonable and documented fees and out-of-pocket costs and expenses of the Pre-Petition Senior Agent under the Pre-Petition Senior Credit Agreement (including reasonable and documented fees and expenses of legal advisors, financial advisors and investment banks of the Pre-Petition Senior Agent) in accordance with, and subject to, the Pre-Petition Senior Credit Agreement and the related Loan Documents (as defined in the Pre-Petition Senior Credit Agreement).

“Adjusted Available Amount” means, as of any date of determination, (x) during the period from the Closing Date to the date falling one hundred twenty (120) days after the Closing Date, the sum of \$12,000,000 plus the LOC Cash Collateral Amount, (y) if the Requisite Lenders extend the Commitment Termination Date in accordance with subsection 2.11, during the period from the Closing Date to the date falling one hundred fifty (150) days after the Closing Date, the sum of \$12,500,000 plus the LOC Cash Collateral Amount and (z) if the Requisite Lenders further extend the Commitment Termination Date in accordance with subsection 2.11, during the period from the Closing Date to date falling one hundred eighty (180) days after the Closing Date, the sum of \$13,000,000 plus the LOC Cash Collateral Amount.

“Adjusted Available Amount Report” means a report substantially in the form of Exhibit XV annexed hereto.

“Adjusted LIBOR” means, for each Interest Period in respect of any LIBOR Loan, an interest rate per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) equal to the greater of (x) 1.50% and (y) the interest rate per annum determined pursuant to the following formula:

$$\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Adjusted LIBOR shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Administrative Agent” has the meaning assigned to that term in the introduction to this Agreement and also means and includes any successor Administrative Agent appointed pursuant to subsection 9.5A.

“Affected Lender” has the meaning assigned to that term in subsection 2.6C.

“Affected Loans” has the meaning assigned to that term in subsection 2.6C.

“Affiliate”, as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“**Aggregate Amounts Due**” has the meaning assigned to that term in subsection 10.5.

“**Agreement**” has the meaning assigned to that term in the preamble hereto.

“**Amended and Restated Subordinated Note Purchase Agreement**” means that certain Amended and Restated Securities Purchase Agreement dated as of May 23, 2012, among Company and the purchasers listed on the signature pages thereof, as amended, supplemented or otherwise modified through the Closing Date and as it may hereafter be further amended, modified, amended and restated, supplemented, refinanced or replaced from time to time in accordance with the terms thereof (to the extent not prohibited by the terms of this Agreement or the Pre-Petition Senior Credit Agreement and authorized by the Bankruptcy Court).

“**Applicable Law**” means any and all laws, regulations, ordinances or other legally binding rules, judgments, orders, decrees, permits, concessions, grants, franchises or governmental restrictions issued or promulgated by a Government Authority and applicable to the matter in question.

“**Approved Fund**” means a Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Asset Sale**” means the sale (x) by Company or any of its Domestic Subsidiaries to any Person other than Company or any of its Subsidiaries that are Guarantors or (y) by any Foreign Subsidiary to any Person other than Company or any of its Subsidiaries of, in each case, (i) any of the stock of any of Company’s Subsidiaries, (ii) substantially all of the assets of any division or line of business of Company or any of its Subsidiaries, or (iii) any other assets (whether tangible or intangible) of Company or any of its Subsidiaries other than: (a) inventory sold in the ordinary course of business, (b) fixtures and equipment that are obsolete or beyond their useful life, (c) Cash Equivalents, (d) sales, assignments, transfers or dispositions of accounts in the ordinary course of business for purposes of collection and (e) any such other assets, provided that the aggregate value of such assets sold pursuant to this clause (e) in any single transaction or related series of transactions is less than or equal to \$500,000.

“**Assigning Lender**” has the meaning assigned to that term in subsection 10.1B(iv).

“**Assignment Agreement**” means an Assignment Agreement in substantially the form of Exhibit IX annexed hereto.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“**Bankruptcy Court**” has the meaning assigned to it in the recitals to this Agreement.

“**Bankruptcy Sale**” shall have the meaning specified in subsection 6.12A(ii).

“**Bankruptcy Sale Order**” shall have the meaning specified in subsection 6.12A(viii).

“**Base Rate**” means, for any day, a rate per annum (rounded upwards to the nearest 1/100 of 1%) equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (iii) 2.50%. If, for any reason, Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate, including the inability or failure of Administrative Agent to obtain sufficient quotations in accordance with the terms hereof, the Base Rate shall be determined without regards to clause (ii) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“**Base Rate Loans**” means Loans bearing interest at rates determined by reference to the Base Rate as provided in subsection 2.2A.

“**BNP Paribas**” has the meaning assigned to that term in the introduction to this Agreement.

“**Budget**” means a statement of the Loan Parties’ projected receipts and disbursements on a weekly basis for the period of thirteen weeks commencing with the Monday following the Petition Date, including the anticipated uses of the Loans for each week during such period, substantially in the form of Exhibit XVI hereto, and otherwise in form and substance satisfactory to the Administrative Agent and the Requisite Lenders. As used herein, “Budget” shall initially refer to Exhibit XVI (which, for the avoidance of doubt, shall be in form and substance satisfactory to the Administrative Agent and the Requisite Lenders) (the “**Initial Budget**”) and, thereafter, the most recent Supplemental Approved Budget delivered by Company and approved by the Administrative Agent and the Requisite Lenders in accordance with subsection 6.1(xvii).

“**Business Day**” means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action

to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with LIBOR or any LIBOR Loans, any day that is a Business Day described in clause (i) above that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“**Capital Lease**”, as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person; provided that, notwithstanding the foregoing in no event will any lease in existence as of the date of any change in GAAP lease accounting that would have been categorized as an operating lease as determined in accordance with GAAP as of the date of such change be considered a Capital Lease.

“**Capital Stock**” means the capital stock of or other equity interests in a Person, excluding, for the avoidance of doubt, Indebtedness of such Person that is convertible or exchangeable into capital stock of such Person until such conversion or exchange actually occurs.

“**Case Professionals**” has the meaning assigned to it in the Interim Order (or the Final Order, when applicable).

“**Case Professionals Carve-Out Amount**” has the meaning assigned to it in the Interim Order (or the Final Order, when applicable).

“**Carve-Out**” has the meaning assigned to it in the Interim Order (or the Final Order, when applicable).

“**Cash**” means money, currency or a credit balance in a Deposit Account.

“**Cash Equivalents**” means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, the highest rating obtainable from either Standard & Poor’s, a division of the McGraw-Hill Companies, Inc. (“**S&P**”) or Moody’s Investors Service, Inc. (“**Moody’s**”); (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s, or in the case of a Foreign Subsidiary, reasonably equivalent ratings of another internationally recognized credit rating agency; (iv) certificates of deposit or bankers’ acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least “**adequately capitalized**” (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; (v) shares of any money market mutual fund that (a) has at least 95% of its assets invested continuously in the types of investments referred to

in clauses (i) and (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's; and (vi) in the case of a Foreign Subsidiary, obligations issued by, or unconditionally guaranteed by, the national government of the country in which such Foreign Subsidiary is incorporated, or issued by any agency thereof, and backed by the full faith and credit or such national government maturing within 180 days from the date of acquisition thereof having, at the time of the acquisition thereof, the highest rating obtainable from either S&P or Moody's.

“**CFC**” means (i) any Foreign Subsidiary that is a “controlled foreign corporation” for United States federal income tax purposes within the meaning of Section 957 of the Code and (ii) any Foreign Subsidiary of such controlled foreign corporation.

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

“**Chapter 11 Case**” has the meaning assigned to it in the recitals to this Agreement.

“**Chapter 11 Plan**” means a Chapter 11 plan of reorganization for Company, if any, that provides for payment in full of the Pre-Petition Senior Loan Obligations upon its consummation, together with all addenda, exhibits, schedules, or other attachments, if any, as the same may be amended, modified, or supplemented from time to time, all of which documents must be in form and substance satisfactory to the Administrative Agent and the Requisite Lenders.

“**Closing Date**” means June [•], 2017.

“**Collateral**” means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“**Collateral Account**” has the meaning assigned to that term in the Security Agreement.

“**Collateral Documents**” means the Holdings Pledge Agreement, the Security Agreement, the Foreign Pledge Agreements, the Mortgages, and all other instruments or documents delivered by any Loan Party pursuant to this Agreement or any of the other Loan

Documents in order to grant to Administrative Agent, on behalf of Lenders, a Lien on any real, personal or mixed property of that Loan Party as security for the Obligations.

“**Commitment**” means the commitment of a Lender to make Loans to Company pursuant to subsection 2.1A(i), and “**Commitments**” means the commitments of all Lenders to make Loans to Company in the aggregate.

“**Commitment Amount**” means \$15,000,000.

“**Commitment Termination Date**” means the date falling one hundred twenty (120) days after the Closing Date, subject to any extension of the Commitment Termination Date pursuant to and in accordance with subsection 2.11.

“**Committee**” means any official committee of unsecured creditors appointed in the Chapter 11 Case.

“**Commodity Hedge Agreements**” means any commodity agreements or other similar agreements (including commodity futures or forward purchase contracts), or arrangements designed to protect against fluctuations in commodity prices, and not for speculative purposes, to which Company or any of its Subsidiaries is a party. For the avoidance of doubt, purchase orders entered into in the ordinary course of business are not Commodity Hedge Agreements.

“**Company**” has the meaning ascribed to such term in the preamble to this Agreement.

“**Connection Income Taxes**” means, with respect to any Lender, Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes and which are imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Consolidated Capital Expenditures**” means, for any period, the sum of the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Leases which is capitalized in such period on the consolidated balance sheet of Company and its Subsidiaries) by Company and its Subsidiaries, excluding, for purposes of subsection 7.8, any Excluded Capital Expenditures by Company and its Subsidiaries, during that period that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of Company and its Subsidiaries. For purposes of this definition, the purchase price of fixed or capital assets that are (a) purchased simultaneously with the trade-in of fixed or capital assets or (b) purchased in accordance with subsection 6.4C within 120 days of receipt of Net Insurance/Condemnation Proceeds, shall be included in Consolidated Capital Expenditures only to the extent of the gross amount of such purchase price less the credit granted by the seller of such fixed or capital assets for the fixed or capital assets being traded in at such time or the

amount of such Net Insurance/Condemnation Proceeds applied to the purchase of such fixed or capital assets, as the case may be.

“Contingent Obligation”, as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (but without duplication) (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (iii) under Hedge Agreements. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if less, the amount to which such Contingent Obligation is specifically limited.

“Contractual Obligation”, as applied to any Person, means any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject (other than leases or other occupancy agreements).

“CST UK” means CST Industries (UK) Limited, a company incorporated in England and Wales with registration number 02212454.

“Currency Agreement” means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, in each case, to which Company or any of its Subsidiaries is a party.

“Defaulting Lender” means any Lender, as determined by Administrative Agent, that (a) has failed to fund any portion of its Loans required to be funded by it hereunder within two Business Days of the date required to be funded by it hereunder, (b) has notified Administrative Agent, any Lender and/or Company in writing that it does not intend to (or will not be able to) comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to (or will not be able to) comply with its funding obligations under this Agreement or under any other agreement in which it commits to extend credit, (c) has failed, within three Business Days after request by Administrative Agent,

to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans, (d) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) in the case of a Lender that has a Commitment outstanding at such time, has become the subject of, or is the Subsidiary of any person that has become the subject of, any bankruptcy, receivership, liquidation, dissolution, or insolvency proceeding (or any comparable action or proceeding initiated by a regulatory authority having jurisdiction over such Lender or such person) or has, or is the Subsidiary of a person that has, become the subject of a Bail-in Action; provided that, for the avoidance of doubt, a Lender shall not be a Defaulting Lender solely by virtue of (i) the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Government Authority or (ii) in the case of a solvent Person, the precautionary appointment of an administrator, guardian, custodian or other similar official by a Government Authority under or based on the law of the country where such Person is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed so long as, in any such case, such action does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Government Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Person.

“Deposit Account” has the meaning set forth in the UCC.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease (as a lessor), farm-out or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollars” and the sign **“\$”** mean the lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of Company that is incorporated or organized under the laws of the United States of America, any state thereof or in the District of Columbia, except for any such a Subsidiary that is treated as a disregarded entity all or substantially all of whose assets consists of equity of one or more direct or indirect CFCs.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (i) any Lender, any Affiliate of any Lender and any Approved Fund of any Lender; and (ii) subject to any applicable consent rights provided in subsection 10.1, (a) a commercial bank organized under the laws of the United States or any state thereof; (b) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (c) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided that (1) such bank is acting through a branch or agency located in the United States or (2) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; and (d) any other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; provided that (i) except pursuant to subsection 10.1, neither Company nor any Affiliate of Company shall be an Eligible Assignee and (ii) none of the entities identified in writing by Company and agreed to by Administrative Agent from time to time shall be an Eligible Assignee.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA and subject to Title I of ERISA which is maintained or contributed to by Company, any of its Subsidiaries or any of their respective ERISA Affiliates and any Former ERISA Affiliate Plan of Company, any of its Subsidiaries or their respective ERISA Affiliates.

“English Pledge Agreement” means the Foreign Pledge Agreement with respect to the Capital Stock of CST UK in form reasonably satisfactory to Administrative Agent.

“Environmental Claim” means any written notice of investigation, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any claim, action, suit, proceeding or demand of or by any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Environmental Laws” means any common law relating to environmental matters and all current or future statutes, ordinances, orders, rules, regulations, binding guidance documents, judgments, Governmental Authorizations, or any other binding requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of the environment, natural resources or human, plant or animal health, safety or welfare, in each case, in any manner applicable to Company or any of its Subsidiaries or any Facility.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“**ERISA Affiliate**”, as applied to any Person, means (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

“**ERISA Event**” means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j)(3) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors, or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (x) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Reserve Percentage” means the reserve percentage (expressed as a decimal, rounded upward, if necessary, to the nearest 1/100 of 1%) in effect on the date LIBOR for such Interest Period is determined (whether or not applicable to any Lender) under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”) having a term comparable to such Interest Period, which for avoidance of doubt, as of the Closing Date, is zero.

“Excluded Capital Expenditures” means Consolidated Capital Expenditures which have been paid for or have been reimbursed in Cash by a third party (including, without limitation, by any up-front payments under agreements to which Company or any of its Subsidiaries is a party to the extent the amount of such up-front payments are designated by such agreement for use for and are actually used to pay for Consolidated Capital Expenditures).

“Event of Default” means each of the events set forth in Section 8.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Taxes” means, with respect to Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any Obligation of Company hereunder (i) Taxes that are imposed on the overall net income (however denominated) and franchise taxes imposed in lieu thereof (a) by the United States, any state thereof or the District of Columbia, (b) by any other Government Authority under the laws of which such Lender is organized or has its principal office or maintains its applicable lending office, or (c) by any Government Authority solely as a result of a present or former connection between such recipient and the jurisdiction of such Government Authority (other than any such connection arising solely from such recipient having executed, delivered or performed its obligations or received a payment under, or enforced, any of the Loan Documents), (ii) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which Company is located, (iii) in the case of a Lender (other than an assignee pursuant to a request of Company under subsection 2.9), any U.S. withholding Tax that (x) is imposed on amounts payable to such Lender at the time it becomes a party hereto (or designates a new lending office), (y) is attributable to such Lender’s failure or inability (other than as a result of a Change in Law) to comply with its obligations under subsection 2.7B(iv), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Company with respect to such withholding Tax pursuant to subsection 2.7B, and (iv) any United States federal withholding Tax imposed by FATCA.

“**Facilities**” means any and all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries or any of their respective predecessors or Affiliates.

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

“**Federal Funds Effective Rate**” means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by Administrative Agent.

“**Final Order**” means a final order entered by the Bankruptcy Court in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures approved by the Bankruptcy Court, which order shall authorize the transactions contemplated by this Agreement and the use of cash collateral in accordance with the Budget, and shall otherwise be in form and substance satisfactory to the Administrative Agent and the Requisite Lenders.

“**First Priority**” means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Collateral (other than Liens permitted pursuant to subsection 7.2A and the Carve-Out) and (ii) such Lien is the only Lien (other than Liens permitted pursuant to subsection 7.2A and the Carve-Out) to which such Collateral is subject.

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

“**Fiscal Year**” means the fiscal year of Company and its Subsidiaries ending on December 31 of each calendar year. For purposes of this Agreement, any particular Fiscal Year may be designated by reference to the calendar year in which such Fiscal Year ends.

“**Flood Hazard Property**” means an Initial Mortgaged Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than that in which Company is resident for tax purposes. For purposes of this definition, the United States, each state thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“**Foreign Plan**” means any employee benefit plan maintained by Company or any of its Subsidiaries that is mandated or governed by any law, rule or regulation of any Government Authority other than the United States, any state thereof or any other political subdivision thereof.

“Foreign Pledge Agreement” means the English Pledge Agreement and each other pledge agreement or similar instrument governed by the laws of a country other than the United States, executed on the Closing Date or from time to time thereafter in accordance with subsection 6.8 by Company or any Subsidiary Guarantor that owns Capital Stock of one or more Foreign Subsidiaries organized in such country, in form and substance reasonably satisfactory to Administrative Agent.

“Foreign Subsidiary” means any Subsidiary of Company that is not a Domestic Subsidiary.

“Former ERISA Affiliate Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA and subject to Title I of ERISA which is or was maintained or contributed to by any former ERISA Affiliate of a Person for which Company or any of its Subsidiaries could be liable under the Internal Revenue Code or ERISA.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funding and Payment Office” means (i) the office of Administrative Agent located at 525 Washington Boulevard, Jersey City, New Jersey 07310 or (ii) such other office of Administrative Agent located in the United States as may from time to time hereafter be designated as such in a written notice delivered by Administrative Agent to Company and each Lender.

“Funding Date” means the date of the funding of a Loan.

“GAAP” means, subject to the limitations on the application thereof set forth in subsection 1.2, generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“Governing Body” means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a corporation, partnership, trust or limited liability company.

“Government Authority” means the government of the United States or any other nation, or any state, regional or local political subdivision or department thereof, and any other governmental or regulatory agency, authority, body, commission, central bank, board, bureau, organ, court, instrumentality or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case whether federal, state, local or foreign (including supra-national bodies such as the European Union or the European Central Bank).

“Governmental Authorization” means any approval, certificate, franchise, permit, license, registration, authorization, plan, directive, consent, order or consent decree of or from, or notice to, any Government Authority.

“Guaranties” means the Holdings Guaranty and the Subsidiary Guaranty.

“Guarantors” means Holdings and each Subsidiary Guarantor.

“Hazardous Materials” means: (i) any chemical, material or substance at any time defined under any applicable Environmental Law as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “biohazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substances”, or any other similar term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority under any applicable Environmental Law.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means an Interest Rate Agreement, a Currency Agreement or a Commodity Hedge Agreement designed to hedge against fluctuations in interest rates, currency values or commodity prices.

“Holdings” means CST Industries Holdings Inc., a Delaware corporation.

“Holdings Common Stock” means the common stock of Holdings.

“Holdings Guaranty” means the Holdings Guaranty dated as of the Closing Date substantially in the form of Exhibit XIII.

“Holdings Pledge Agreement” means the Holdings Pledge Agreement dated as of the Closing Date, substantially in the form of Exhibit XIV.

“Indebtedness”, as applied to any Person, means (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, (v) Synthetic Lease Obligations, and (vi) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person. Obligations under Interest Rate Agreements, Currency Agreements and Commodity Hedge Agreements constitute Contingent Obligations.

“Indemnified Liabilities” has the meaning assigned to that term in subsection 10.3.

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

“Indemnitee” has the meaning assigned to that term in subsection 10.3.

“Initial Mortgages” means Mortgages encumbering each fee owned Real Property Asset listed in Schedule 4.1K annexed hereto (each a **“Initial Mortgaged Property”** and, collectively, the **“Initial Mortgaged Properties”**).

“Intellectual Property” means all patents, trademarks, trade names, copyrights, technology, software, know-how and processes used in or necessary for the conduct of the business of Company and its Subsidiaries.

“Interest Payment Date” means (i) with respect to any Base Rate Loan, the last Business Day of each month, commencing on the first such date to occur after the Closing Date, and (ii) with respect to any LIBOR Loan, the last day of each Interest Period applicable to such Loan.

“Interest Period” has the meaning assigned to that term in subsection 2.2B.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement to which Company or any of its Subsidiaries is a party.

“Interest Rate Determination Date”, with respect to any Interest Period, means the second Business Day prior to the first day of such Interest Period.

“Interim Order” means an interim order entered by the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in

accordance with the terms hereof) in the form set forth as Exhibit XVII (as modified in a manner satisfactory to the Administrative Agent and the Requisite Lenders).

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“**Investment**” means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any Securities of any other Person (including any Subsidiary of Company) or (ii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Company or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales or services provided to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment (other than adjustments for the repayment of, or the refund of capital with respect to, the original principal amount of any such Investment).

“**IP Collateral**” means, collectively, the Intellectual Property that constitutes Collateral under the Security Agreement.

“**IP Filing Office**” means the United States Patent and Trademark Office, the United States Copyright Office or any successor or substitute office in which filings are necessary or, in the opinion of Administrative Agent, desirable in order to create or perfect Liens on any IP Collateral.

“**Joint Venture**” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“**Leasehold Property**” means any leasehold interest of any Loan Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Administrative Agent in its sole discretion as not being required to be included in the Collateral.

“**Lender**” and “**Lenders**” means the Persons party to this Agreement as “Lenders”, together with their successors and permitted assigns pursuant to subsection 10.1.

“**LIBOR**” means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBOR Loan, the London interbank offered rate, rounded upward, if necessary, to the nearest 1/100 of 1%, equal to the offered rate for deposits in Dollars for a period equal to such Interest Period, commencing on the first day of such Interest Period, which appears on Reuters Screen LIBOR01 or such other page as may replace Reuters Screen LIBOR01 on that service or any successor service for the purpose of displaying London interbank offered rates of major banks) as of 11:00 A.M. (London time), on such Interest Rate Determination Date. If the LIBOR rate for an Interest Period cannot be determined pursuant to the preceding sentence, then the LIBOR rate for such Interest Period shall be determined on the basis of the rates at which deposits in Dollars are offered to BNP Paribas at approximately 11:00

A.M. (London time) on such Interest Rate Determination Date, and on an amount that is approximately equal to the principal amount of the LIBOR Loans to which such Interest Period is applicable. In such circumstance, Administrative Agent will request the principal London office of BNP Paribas to provide a quotation of its rate.

“**LIBOR Loans**” means Loans bearing interest at rates determined by reference to Adjusted LIBOR as provided in subsection 2.2A.

“**Lien**” means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“**LOC Cash Collateral Amount**” means the principal amount of Loans used by Company, or to be used by Company immediately in connection with any Loan as indicated in the Notice of Borrowing relating thereto, solely for the purpose of cash collateralizing and obtaining letters of credit necessary for Company to secure bids or orders in the ordinary course of its business and as otherwise permitted pursuant to subsection 7.4(i) as certified in (i) any Notice of Borrowing delivered by Company pursuant to subsection 2.1B or (ii) an Adjusted Available Amount Report delivered by Company to the Administrative Agent pursuant to subsection 6.1(xxi).

“**Loan**” or “**Loans**” means one or more of the Loans made by Lenders to Company pursuant to subsection 2.1A.

“**Loan Documents**” means this Agreement, the Notes, the Guaranties, the Collateral Documents, and all amendments, waivers and consents relating thereto.

“**Loan Party**” means each of Holdings, Company and any of Company’s Subsidiaries from time to time executing a Loan Document, and “**Loan Parties**” means all such Persons, collectively.

“**Margin Stock**” has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“**Material Adverse Effect**” means any of (i) a material adverse effect upon the business, operations, properties, assets, condition (financial or otherwise), liabilities (whether contractual, environmental or otherwise) or prospects of Company and its Subsidiaries taken as a whole, or (ii) the impairment of the ability of the Loan Parties, taken as a whole, to perform the Obligations in any material way, or (iii) the impairment of the ability of Administrative Agent or Lenders to enforce the Obligations.

“**Material Leasehold Property**” means a Leasehold Property reasonably determined by Administrative Agent to be of material value as Collateral or of material importance to the operations of Company or any of its Subsidiaries, including, without limitation, the properties set forth on Schedule 6.9.

“Material Owned Property” means any real property owned in fee by any Loan Party with a value equal to or in excess of \$1,000,000.

“Material Real Property Assets” means all Material Owned Property and Material Leasehold Property.

“Mortgage” means (i) a security instrument (whether designated as a deed of trust or a mortgage or by any similar title) executed and delivered by any Loan Party, substantially in the form and substance acceptable to the Administrative Agent in its reasonable discretion, in each case with such changes thereto as may be reasonably recommended by Administrative Agent’s local counsel based on local laws or customary local mortgage or deed of trust practices, or (ii) at Administrative Agent’s option, in the case of an Additional Mortgaged Property, an amendment to an existing Mortgage, in form reasonably satisfactory to Administrative Agent, adding such Additional Mortgaged Property to the Material Real Property Assets encumbered by such existing Mortgage.

“Mortgages” means all such instruments, including the Initial Mortgages and any Additional Mortgages, collectively.

“Multiemployer Plan” means any Employee Benefit Plan that is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“Net Asset Sale Proceeds”, with respect to any Asset Sale, means Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received from such Asset Sale, net of any bona fide direct costs (including professional fees and costs) incurred in connection with such Asset Sale, including (i) income taxes reasonably estimated to be actually payable within two years of the date of such Asset Sale as a result of any gain recognized in connection with such Asset Sale and (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is (a) secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (b) actually paid within 30 days of receipt of such cash payment to a Person that is not an Affiliate of any Loan Party or of any Affiliate of a Loan Party; provided, however, that Net Asset Sale Proceeds shall not include any cash payments received from any Asset Sale by a Foreign Subsidiary unless such proceeds may be repatriated (by reason of a repayment of an intercompany note or otherwise) to the United States without (in the reasonable judgment of Company) resulting in a material Tax liability to Company.

“Net Cash Flow” means, with respect to each Testing Period, an amount equal to (a) total operating receipts and other cash collections received by the Loan Parties during such Testing Period minus (b) cash disbursements made by the Loan Parties during such Testing Period, in each case, without giving effect to the making of the Loans or the repayments or prepayments of the Loans.

“Net Insurance/Condemnation Proceeds” means any Cash payments or proceeds received by Company or any of its Subsidiaries (i) under any business interruption or casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of

any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case net of any actual and reasonable documented costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof; provided, however, that Net Insurance/Condemnation Proceeds shall not include any cash payments received by a Foreign Subsidiary unless such proceeds are repatriated or may be repatriated (by reason of a repayment of an intercompany note or otherwise) to the United States without (in the reasonable judgment of Company) resulting in a material tax liability to Company.

“**Non-Consenting Lender**” has the meaning assigned to that term in subsection 2.9.

“**Notes**” means any promissory notes of Company issued pursuant to subsection 2.1.E to evidence the Loans of any Lenders, substantially in the form of Exhibit VI.

“**Notice of Borrowing**” means a notice substantially in the form of Exhibit I annexed hereto.

“**Notice of Conversion/Continuation**” means a notice substantially in the form of Exhibit II annexed hereto.

“**Obligations**” means all obligations of every nature of each Loan Party from time to time owed to Administrative Agent, Lenders or any of them under the Loan Documents, whether for principal, interest, fees, expenses, indemnification or otherwise.

“**Officer**” means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

“**Officer’s Certificate**”, as applied to any Person that is a corporation, partnership, trust or limited liability company, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member if such general partner or managing member is a corporation, partnership, trust or limited liability company.

“**Operating Lease**”, as applied to any Person, means any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) that is not a Capital Lease other than any such lease under which that Person is the lessor.

“**Organizational Documents**” means the documents (including Bylaws, if applicable) pursuant to which a Person that is a corporation, partnership, trust or limited liability company is organized.

“**Other Taxes**” means all present or future stamp or documentary taxes or any other excise or property taxes, charges, fees, expenses or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Participant**” means a purchaser of a participation in the rights and obligations under this Agreement pursuant to subsection 10.1C.

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

“**Pension Plan**” means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA, and, for purposes of subsection 8.10, any Foreign Plan.

“**Permitted Encumbrances**” means the following types of Liens (excluding any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or by ERISA, any such Lien imposed by a Government Authority in connection with any Foreign Plan and any such Lien relating to or imposed in connection with any Environmental Claim):

(i) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required by subsection 6.3;

(ii) statutory Liens of landlords, Liens of collecting banks under the UCC on items in the course of collection, statutory Liens and rights of set-off of banks, statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (a) for amounts not yet overdue or (b) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 10 days) are being contested in good faith by appropriate proceedings, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, and (2) in the case of a Lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;

(iii) deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of statutory obligations, bids, leases, government contracts, trade contracts, appeals bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(iv) any attachment or judgment Lien not constituting an Event of Default under subsection 8.8;

(v) licenses (with respect to Intellectual Property and other property), leases or subleases granted to third parties in accordance with any applicable terms of the Collateral Documents and not interfering in any material respect with the ordinary conduct of the

business of Company or any of its Subsidiaries or resulting in a material diminution in the value of the Collateral as security for the Obligations;

(vi) easements, rights-of-way, restrictions, encroachments, and other defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries or result in a material diminution in the value of the Collateral as security for the Obligations;

(vii) any (a) interest or title of a lessor or sublessor under any lease not prohibited by this Agreement, (b) Lien or restriction that the interest or title of such lessor or sublessor may be subject to, or (c) subordination of the interest of the lessee or sublessee under such lease to any Lien or restriction referred to in the preceding clause (b), so long as the holder of such Lien or restriction agrees to recognize the rights of such lessee or sublessee under such lease;

(viii) Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement;

(ix) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(x) any zoning or similar law or right reserved to or vested in any Government Authority to control or regulate the use of any real property;

(xi) Liens granted pursuant to the Collateral Documents or otherwise securing the Obligations;

(xii) Liens in favor of Company or a Subsidiary Guarantor on assets of any Subsidiary of Company;

(xiii) any interest or title of a lessor under any Capital Lease permitted hereunder, provided that such Liens do not extend to any property or assets which are not leased property subject to such Capital Lease;

(xiv) Liens in favor of a public utility or any municipality or governmental or other public authority when required by such utility, municipality or authority in connection with the ordinary course of operations of Company or its Subsidiaries (and not securing Indebtedness for borrowed money), provided that all such Liens only secure (a) amounts not yet overdue or (b) amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 30 days) are being contested in good faith by appropriate proceedings, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, and (2) in the case of a Lien with respect to any portion of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;

(xv) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of Company and its Subsidiaries;

(xvi) Cash deposits made to secure indemnity or reimbursement obligations in connection with any surety bonding program of Company and/or its Subsidiaries;

(xvii) pledges and deposits in the ordinary course of business securing insurance premiums or reimbursement obligations under insurance policies;

(xviii) Liens (a) in favor of a banking institution arising as a matter of law encumbering deposits at such institution (including the right of set-off) and which are within the general parameters customary in the banking industry, (b) that are contractual rights of set-off relating to pooled deposit or sweep accounts of Company or its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Company and its Subsidiaries or (c) that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers of Company or any Subsidiary in the ordinary course of business;

(xix) Liens consisting of an agreement to dispose of any property in a disposition permitted under subsection 7.7;

(xx) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into in the ordinary course of business and not prohibited by this Agreement; and

(xxi) the Replacement Liens (as defined in the Interim Order or Final Order, as applicable) and Liens securing the Pre-Petition Senior Obligations, as of the Closing Date or as otherwise provided under the Interim Order or Final Order, as applicable.

“Permitted Variance” means, for the period commencing on the Monday following the Petition Date and ending on the fifth Sunday following the Petition Date, and thereafter, each subsequent period beginning on the Monday following the immediately preceding Trailing Four Week Period and ending on the fourth Sunday thereafter (each such period, a **“Testing Period”**), (i) all favorable Variances, (ii) an unfavorable Variance of no more than 12.50% for actual cumulative total operating receipts and other cash collections of the Loan Parties for such Testing Period as compared to the projected amounts of cumulative operating receipts and other cash collections set forth in the Budget for such Testing Period, (iii) an unfavorable Variance of no more than 12.50% for actual cumulative disbursements of the Loan Parties on a line item basis for such Testing Period as compared to the budgeted amounts of cumulative disbursements on a line item basis set forth in the Budget for such Testing Period (without giving effect to the making of Loans or the repayment or prepayment of Loans); provided that, to the extent in any Testing Period, actual disbursements for any line item are less than the budgeted disbursements of such line item for such Testing Period, the budgeted disbursements for such line item for the succeeding Testing Period shall be increased by an amount equal to such difference (unless the Supplemental Approved Budget covering such subsequent period has been updated to reflect such rollover) and (iv) an unfavorable Variance of no more than 15.00% for actual Net Cash Flow for such Testing Period as compared to the budgeted amount of Net Cash Flow set forth in the Budget for such Testing Period.

“**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Government Authorities.

“**Petition Date**” has the meaning assigned to it in the recitals to this Agreement.

“**Pledged Collateral**” means, collectively, the “Pledged Collateral” as defined in the Holdings Pledge Agreement, the Security Agreement and any Foreign Pledge Agreement.

“**Potential Event of Default**” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“**Pre-Petition Senior Credit Agreement**” means that certain Credit Agreement dated as of May 23, 2012, by and among Company, the financial institutions party thereto as lenders and BNP Paribas, as administrative agent, as amended, supplemented or otherwise modified through the Closing Date and as it may hereafter be further amended, modified, amended and restated, supplemented, refinanced or replaced from time to time in accordance with the terms thereof (to the extent permitted by the terms of this Agreement and the Subordinated Note Documents and authorized by the Bankruptcy Court).

“**Pre-Petition Senior Lenders**” means the lenders under the Pre-Petition Senior Credit Agreement.

“**Pre-Petition Senior Agent**” means the administrative agent under the Pre-Petition Senior Credit Agreement.

“**Pre-Petition Senior Loan Obligations**” means all “Obligations” under, and as defined in, the Pre-Petition Senior Credit Agreement of any Loan Party and any of their Subsidiaries to the Pre-Petition Senior Agent and the Pre-Petition Senior Lenders pursuant to the Pre-Petition Senior Credit Agreement, and all instruments and documents executed pursuant thereto or in connection therewith.

“**Prime Rate**” means the rate that BNP Paribas in New York announces from time to time as its prime rate, effective as of the date announced as the effective date of any change in such prime rate. Without notice to Company or any other Person, the Prime Rate shall change automatically from time to time as and in the amount by which such prime rate shall fluctuate. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. BNP Paribas or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“**Proceedings**” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation (written notice of which has been received by Company) or arbitration.

“**Pro Rata Share**” means with respect to any Lender, as of any date of determination, the percentage obtained (i) prior to the termination of the Commitments, by dividing the amount of that Lender’s Commitment by the aggregate amount of all Lenders’

Commitments, and (ii) after the termination of the Commitments, by dividing the aggregate outstanding principal amount of the Loans of that Lender by the aggregate outstanding principal amount of all Loans. The Pro Rata Share of each Lender as of the Closing Date is set forth opposite the name of that Lender in Schedule 2.1 annexed hereto.

“Real Property Asset” means, at any time of determination, any interest then owned by any Loan Party (other than any Foreign Subsidiary) in any real property.

“Register” has the meaning assigned to that term in subsection 2.1D.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

“Requisite Lenders” means Lenders having or holding more than 50% of the sum of the aggregate unused Commitments and the aggregate outstanding principal amount of the Loans of all Lenders.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer, assistant treasurer, secretary, assistant secretary or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Junior Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Company now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Company now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Company now or hereafter outstanding, and (iv) any voluntary or optional payment or prepayment of principal of, premium, if any, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment or any payment in cash of any interest permitted to be paid in kind by Company or its Subsidiaries with respect to, any Subordinated Indebtedness, including, without limitation, the Subordinated Notes.

“SEC” means the Securities and Exchange Commission, or any Government Authority succeeding to any of its principal functions.

“**Securities**” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated, certificated or uncertificated, or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“**Securities Act**” means the United States Securities Act of 1933, as amended from time to time, and any successor statute.

“**Security Agreement**” means the Security Agreement executed on the Closing Date, substantially in the form of Exhibit XII annexed hereto.

“**Sponsor**” shall mean The Sterling Group, L.P.

“**SPV**” has the meaning assigned to that term in subsection 10.1B(iv).

“**Subject Lender**” has the meaning assigned to that term in subsection 2.9.

“**Subordinated Indebtedness**” means (i) the Subordinated Notes and (ii) any other Indebtedness of Company incurred from time to time that is subordinated in right of payment to the Obligations and designated by Company as being “Subordinated Indebtedness” for purposes hereof.

“**Subordinated Note Documents**” means the Note Documents as defined in the Amended and Restated Subordinated Note Purchase Agreement, as they may hereafter be amended, modified, amended and restated, supplemented, refinanced or replaced from time to time in accordance with the terms thereof (to the extent not prohibited by the terms of this Agreement and the Pre-Petition Senior Credit Agreement and authorized by the Bankruptcy Court).

“**Subordinated Notes**” means those certain Subordinated Notes issued by Company pursuant to the Amended and Restated Subordinated Note Purchase Agreement.

“**Subsidiary**”, with respect to any Person, means any corporation, partnership, trust, limited liability company, association, Joint Venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the Governing Body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof. Unless the context indicates otherwise, “Subsidiary” means a Subsidiary of Company.

“**Subsidiary Guarantor**” means any Subsidiary of Company (other than any Foreign Subsidiary that is a CFC) that executes and delivers the Subsidiary Guaranty on the Closing Date, or that executes and delivers a counterpart of the same from time to time after the Closing Date pursuant to subsection 6.8.

“**Subsidiary Guaranty**” means the Subsidiary Guaranty executed on the Closing Date and any Subsidiary Guaranty to be executed and delivered by any Subsidiary of Company from time to time after the Closing Date in accordance with subsection 6.8, substantially in the form of Exhibit XI annexed hereto.

“**Supplemental Approved Budget**” means any updated Budget delivered to and approved by the Administrative Agent and the Requisite Lenders in accordance with subsection 6.1(xvii).

“**Supplemental Collateral Agent**” has the meaning assigned to that term in subsection 9.1B.

“**Synthetic Lease Obligation**” means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness for borrowed money or Capital Leases of such Person (without regard to accounting treatment).

“**Tax**” or “**Taxes**” means any present or future tax, levy, impost, duty, fee, assessment, deduction, withholding or other charge of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including interest, penalties, additions to tax and any similar liabilities with respect thereto.

“**Testing Period**” has the meaning ascribed to it in the definition of “**Permitted Variance**”.

“**Trailing Four Week Period**” means the four Week period up to and through the Sunday of the most recent Week then ended.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“**Unasserted Obligations**” means, at any time, Obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities (except for the principal of and interest on, and fees relating to, any Indebtedness) in respect of which no claim or demand for payment has been made (or, in the case of Obligations for indemnification, no notice for indemnification has been issued by the Indemnitee) at such time.

“**Variance**” has the meaning assigned to such term in the definition of “**Variance Report**”.

“**Variance Report**” means a report certified by a Responsible Officer of Company, in form reasonably satisfactory to the Administrative Agent, showing for (i) the Week immediately preceding the Week during which such Variance Report is delivered pursuant to subsection 6.1(xviii) and (ii) all Weeks in the Testing Period during which such Variance Report is delivered, (a) the actual cumulative operating receipts and other cash collections received by the Loan Parties for such Week and for all Weeks in the Testing Period during which such

Variance Report is delivered, (b) the actual cumulative disbursements measured on a line item basis made by the Loan Parties during such Week and for all Weeks in the Testing Period during which such Variance Report is delivered, (c) the actual Net Cash Flow for such Week and for all Weeks in the Testing Period during which such Variance Report is delivered and (d) the variance, expressed as both a percentage and a dollar amount, of the amounts described in clauses (a), (b) and (c) above from the corresponding anticipated amounts therefor for such Week and for all Weeks in such Testing Period as set forth in the Budget (each a “**Variance**”), in each case, without giving effect to the making of any Loans or the repayment or prepayment of any Loans.

“**Week**” means any seven (7) day period commencing on a Monday and ending on a Sunday.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2 Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement.

Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Administrative Agent pursuant to clauses (ii) and (iii) of subsection 6.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in subsection 6.1(v)). Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAAP as in effect on the date of determination, applied in a manner consistent with that used in preparing the financial statements referred to in subsection 5.3; provided that if at any time any change in GAAP (or change in application thereof), would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Company, Administrative Agent or Requisite Lenders shall so request, Administrative Agent, Lenders and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (or change in application thereof) (subject to the approval of Requisite Lenders), provided that, until so amended or such time as it is agreed that no amendment is necessary, such ratio or requirement shall continue to be computed in accordance with GAAP (or application thereof) prior to such change and Company shall provide to Administrative Agent and Lenders reconciliation statements provided for in subsection 6.1(v). Notwithstanding the foregoing or any other provision of this Agreement providing for any amount to be determined in accordance with GAAP, for purposes of determining compliance with the financial covenants contained in this Agreement, any election by Company to measure an item of Indebtedness using fair value (as permitted by Statement of Financial Accounting Standards No. 159 or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

1.3 Other Definitional Provisions and Rules of Construction.

A. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

B. References to “Sections” and “subsections” shall be to Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

C. The use in any of the Loan Documents of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

D. Unless otherwise expressly provided herein, references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements and other modifications thereto.

E. A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation.

F. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due on a day that is not a Business Day or delivery of any notice, document, certificate or other writing is stated to be required on a day that is not a Business Day, the date of such payment, performance or delivery shall extend to the immediately succeeding Business Day (subject to the provisions of subsection 2.2B(iii)).

Section 2. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS

2.1 Commitments; Making of Loans; the Register; Optional Notes.

A. Commitments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Company herein set forth, each Lender hereby severally agrees to make the Loans as described in subsection 2.1A(i).

(i) Loans. Each Lender severally agrees, subject to the limitations set forth below with respect to the maximum amount of Loans permitted to be outstanding from time to time, to lend to Company from time to time in an aggregate amount not to exceed its Commitment subject to the following limitations: (x) during the period from the Closing Date to the date falling one hundred twenty (120) days after the Closing Date, the aggregate outstanding principal amount of the Loans shall not exceed the greater of \$12,000,000 and the Adjusted Available Amount in effect at such time, (y) if the Requisite Lenders

extend the Commitment Termination Date in accordance with subsection 2.11, during the period from the Closing Date to the date falling one hundred fifty (150) days after the Closing Date, the aggregate outstanding principal amount of the Loans shall not exceed the greater of \$12,500,000 and the Adjusted Available Amount in effect at such time and (z) if the Requisite Lenders further extend the Commitment Termination Date in accordance with subsection 2.11, during the period from the Closing Date to the date falling one hundred eighty (180) days after the Closing Date, the aggregate outstanding principal amount of the Loans shall not exceed the greater of \$13,000,000 and the Adjusted Available Amount in effect at such time. The amount of each Lender's Commitment as of the Closing Date is set forth opposite its name on Schedule 2.1 annexed hereto and the Commitment Amount as of the Closing Date is \$15,000,000; provided that the amount of the Commitment of each Lender shall be adjusted to give effect to any assignment of such Commitment pursuant to subsection 10.1B and shall be reduced from time to time by the amount of any reductions thereto made pursuant to subsection 2.4. Each Lender's Commitment shall expire on the Commitment Termination Date and all Loans of each Lender and all other amounts owed hereunder with respect to the Loans and the Commitments of each Lender shall be paid in full no later than that date. Amounts borrowed under this subsection 2.1A(i) may be repaid and reborrowed to but excluding the Commitment Termination Date, in each case in accordance with the terms hereof.

Anything contained in this Agreement to the contrary notwithstanding, in no event shall the aggregate outstanding principal amount of the Loans at any time exceed the Commitment Amount then in effect.

B. Borrowing Mechanics. Loans made on any Funding Date shall be in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount. Whenever Company desires that Lenders make Loans it shall deliver to Administrative Agent a duly executed Notice of Borrowing no later than 11:00 A.M. (New York City time) at least three Business Days in advance of the proposed Funding Date (in the case of a LIBOR Loan) or at least one Business Day in advance of the proposed Funding Date (in the case of a Base Rate Loan), provided that any Notice of Borrowing with respect to any Base Rate Loan borrowings on the Closing Date may be delivered no later than 9:00 A.M. on the Closing Date. Loans may be continued as or converted into Base Rate Loans and LIBOR Loans in the manner provided in subsection 2.2D. In lieu of delivering a Notice of Borrowing, Company may give Administrative Agent telephonic notice by the required time of any proposed borrowing under this subsection 2.1B; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Borrowing to Administrative Agent on or before the applicable Funding Date.

Neither Administrative Agent nor any Lender shall incur any liability to Company in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by an Officer or other person authorized to borrow on behalf of Company or for otherwise acting in good faith under this subsection 2.1B or under subsection 2.2D, and upon funding of Loans by Lenders, and upon conversion or continuation of the applicable basis for determining the interest rate with respect to any Loans pursuant to subsection

2.2D, in each case in accordance with this Agreement, pursuant to any such telephonic notice Company shall have effected Loans or a conversion or continuation, as the case may be, hereunder.

Company shall notify Administrative Agent prior to the funding of any Loans in the event that any of the matters to which Company is required to certify in the applicable Notice of Borrowing is no longer true and correct as of the applicable Funding Date, and the acceptance by Company of the proceeds of any Loans shall constitute a re-certification by Company, as of the applicable Funding Date, as to the matters to which Company is required to certify in the applicable Notice of Borrowing.

Except as otherwise provided in subsections 2.6B, 2.6C and 2.6G, a Notice of Borrowing for, or a Notice of Conversion/Continuation for conversion to, or continuation of, a LIBOR Loan (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to make a borrowing or to effect a conversion or continuation in accordance therewith.

C. Disbursement of Funds. All Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that neither Administrative Agent nor any Lender shall be responsible for any default by any other Lender in that other Lender's obligation to make a Loan requested hereunder nor shall the amount of the Commitment of any Lender to make the Loan requested be increased or decreased as a result of a default by any other Lender in that other Lender's obligation to make a Loan requested hereunder. Promptly after receipt by Administrative Agent of a Notice of Borrowing pursuant to subsection 2.1B (or telephonic notice in lieu thereof), Administrative Agent shall notify each Lender of the proposed borrowing. Each Lender shall make the amount of its Loan available to Administrative Agent not later than 1:00 P.M. (New York City time) on the applicable Funding Date in same day funds in Dollars, at the Funding and Payment Office. Upon satisfaction or waiver of the conditions precedent specified in subsections 4.1 (in the case of Loans made on the Closing Date) and 4.2 (in the case of all Loans), Administrative Agent shall make the proceeds of such Loans available to Company on the applicable Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at the Funding and Payment Office or such other account as specified by Company in the applicable Notice of Borrowing.

Unless Administrative Agent shall have been notified by any Lender prior to a Funding Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Funding Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Funding Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on such Funding Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate.

If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the rate payable under this Agreement for Base Rate Loans. Nothing in this subsection 2.1C shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

D. The Register. Administrative Agent, acting for these purposes solely as an agent of Company (it being acknowledged that Administrative Agent, in such capacity, and its officers, directors, employees, agent and affiliates shall constitute Indemnitees under subsection 10.3), shall maintain at its address referred to in subsection 10.8 a register for the recordation of, and shall record, the names and addresses of Lenders and the respective amounts of the Commitment and Loans of each Lender from time to time (the "**Register**"). Administrative Agent shall make the Register available for inspection by Company and the Lenders upon reasonable prior notice at reasonable times, provided that a Lender shall only be entitled to inspect its own entry in the Register and not that of any other Lender. Company, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof; all amounts owed with respect to any Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof; and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. Each Lender shall record on its internal records the amount of its Loans and Commitments and each payment in respect hereof, and any such recordation shall be prima facie evidence of the contents thereof, absent manifest error, subject to the entries in the Register, which shall, absent manifest error, govern in the event of any inconsistency with any Lender's records. Failure to make any recordation in the Register or in any Lender's records, or any error in such recordation, shall not affect any Loans or Commitments or any Obligations in respect of any Loans.

E. Optional Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at any time, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to subsection 10.1) promptly after Company's receipt of such notice a promissory note or promissory notes to evidence such Lender's Loans, substantially in the form of Exhibit VI annexed hereto, with appropriate insertions.

2.2 Interest on the Loans.

A. Rate of Interest. Subject to the provisions of subsections 2.6 and 2.7, each Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate or Adjusted LIBOR. The applicable basis for determining the rate of interest with respect to any Loan shall be selected by Company initially at the time a Notice of Borrowing is given with respect to such Loan pursuant to subsection 2.1B (subject to the last sentence of subsection

2.1B), and the basis for determining the interest rate with respect to any Loan may be changed from time to time pursuant to subsection 2.2D (subject to the last sentence of subsection 2.1B). If on any day a Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day that Loan shall bear interest determined by reference to the Base Rate.

(i) Subject to the provisions of subsections 2.2E, 2.2G and 2.7, the Loans shall bear interest through maturity as follows:

(a) if a Base Rate Loan, then at the sum of the Base Rate plus 5.25% per annum; or

(b) if a LIBOR Loan, then at the sum of Adjusted LIBOR plus 6.25% per annum.

B. Interest Periods. In connection with each LIBOR Loan, the interest period (each an “**Interest Period**”) applicable to such Loan shall be a one-month period; provided that:

(i) the initial Interest Period for any LIBOR Loan shall commence on the Funding Date in respect of such Loan, in the case of a Loan initially made as a LIBOR Loan, or on the date specified in the applicable Notice of Conversion/Continuation, in the case of a Loan converted to a LIBOR Loan;

(ii) in the case of immediately successive Interest Periods applicable to a LIBOR Loan continued as such pursuant to a Notice of Conversion/Continuation, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;

(iii) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(iv) 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, subject to clause (v) of this subsection 2.2B, end on the last Business Day of a calendar month;

(v) (a) no Interest Period with respect to any portion of the Loans shall extend beyond the Commitment Termination Date;

(vi) [Reserved];

(vii) there shall be no more than five Interest Periods outstanding at any time.

C. Interest Payments. Subject to the provisions of subsection 2.2E, interest on each Loan shall be payable in arrears on and to each Interest Payment Date applicable to that Loan, upon any prepayment of that Loan (to the extent accrued on the amount being prepaid) and at maturity (including final maturity); provided that, in the event any Loans that are Base Rate Loans are prepaid pursuant to subsection 2.4B(i), interest accrued on such Loans through the date of such prepayment shall be payable on the next succeeding Interest Payment Date applicable to Base Rate Loans (or, if earlier, at final maturity).

D. Conversion or Continuation. Subject to the provisions of subsection 2.6, Company shall have the option (i) to convert at any time all or any part of its outstanding Loans equal to \$500,000 and multiples of \$100,000 in excess of that amount from Loans bearing interest at a rate determined by reference to one basis to Loans bearing interest at a rate determined by reference to an alternative basis or (ii) upon the expiration of any Interest Period applicable to a LIBOR Loan, to continue all or any portion of such Loan equal to \$1,000,000 and multiples of \$500,000 in excess of that amount as a LIBOR Loan; provided, however, that any conversion of a LIBOR Loan into a Base Rate Loan on a date other than the expiration date of an Interest Period applicable thereto shall be subject to any payments required by subsection 2.6D (if any).

Company shall deliver a duly executed Notice of Conversion/Continuation to Administrative Agent no later than 2:00 P.M. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and no later than 11:00 A.M. (New York City time) at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Loan). In lieu of delivering a Notice of Conversion/Continuation, Company may give Administrative Agent telephonic notice by the required time of any proposed conversion/continuation under this subsection 2.2D; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Conversion/Continuation to Administrative Agent on or before the proposed conversion/continuation date. Administrative Agent shall promptly notify each Lender of any Notice of Conversion/Continuation.

E. Default Rate. Upon the occurrence and during the continuation of any Event of Default, upon the election by Administrative Agent or Requisite Lenders, the outstanding principal amount of all Loans and, to the extent permitted by Applicable Law, any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws whether or not allowed in such proceeding) payable upon demand by Administrative Agent at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Loans); provided that, in the case of LIBOR Loans, at the election of Administrative Agent or Requisite Lender during the continuance of an Event of Default, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such LIBOR

Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this subsection 2.2E is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

F. Computation of Interest. Interest on the Loans shall be computed (i) in the case of Base Rate Loans, on the basis of a 365-day or 366-day year, as the case may be, and (ii) in the case of LIBOR Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a LIBOR Loan, the date of conversion of such LIBOR Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a LIBOR Loan, the date of conversion of such Base Rate Loan to such LIBOR Loan, as the case may be, shall be excluded; provided that if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

G. Maximum Rate. Notwithstanding the foregoing provisions of this subsection 2.2, in no event shall the rate of interest payable by Company with respect to any Loan exceed the maximum rate of interest permitted to be charged under Applicable Law.

2.3 Fees.

A. Commitment Fees. Company agrees to pay to Administrative Agent, for distribution to each Lender in proportion to that Lender's Pro Rata Share, commitment fees for the period from and including the Closing Date to and excluding the Commitment Termination Date equal to the average of the daily excess of the Commitment Amount over the aggregate outstanding principal amount of the Loans multiplied by 0.50% per annum, such commitment fees to be calculated on the basis of a 360-day year and the actual number of days elapsed and to be payable on the last Business Day of each month, commencing on the first such date to occur after the Closing Date, and on the Commitment Termination Date.

B. Upfront Fees. Company agrees to pay to Administrative Agent, on the Closing Date, for distribution to each Lender, upfront fees equal to 2.0% of such Lender's Commitment.

C. Exit Fee. Company agrees to pay to Administrative Agent, on the date of final repayment of the Loans hereunder, for distribution to each Lender, exit fees equal to 2.0% of such Lender's Commitment.

D. Other Fees. Company agrees to pay to Administrative Agent such fees in the amounts and at the times separately agreed upon between Company and Administrative Agent.

2.4 Repayments, Prepayments and Reductions of Commitment Amount; General Provisions Regarding Payments; Application of Proceeds of Collateral and Payments Under Guaranties.

A. [Reserved].

B. Prepayments and Reductions in Commitment Amount.

(i) Voluntary Prepayments. Company may, upon not less than one Business Day's prior written or telephonic notice, in the case of Base Rate Loans, and three Business Days' prior written or telephonic notice, in the case of LIBOR Loans, in each case given to Administrative Agent by 2:00 P.M. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent, who will promptly notify each Lender, at any time and from time to time prepay, without premium or penalty, any Loans on any Business Day in whole or in part in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount; provided that if a LIBOR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, Company shall also pay any amounts owing pursuant to subsection 2.6D. Notice of prepayment having been given as aforesaid, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided, however, that any notice of prepayment may be expressly made contingent on the occurrence of a refinancing or the consummation of a sale, transfer, lease or other disposition of assets and if so designated may be revoked or the termination date deferred if the refinancing or sale, transfer, lease or other disposition of assets does not occur. Any such voluntary prepayment shall be applied as specified in subsection 2.4B(iv).

(ii) Voluntary Reductions of Commitments. Company may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent, or upon such lesser number of days' prior written or telephonic notice, as determined by Administrative Agent in its sole discretion, at any time and from time to time, terminate in whole or permanently reduce in part, without premium or penalty, the Commitment Amount in an amount up to the amount by which the Commitment Amount exceeds the aggregate outstanding principal amount of the Loans at the time of such proposed termination or reduction; provided that any such partial reduction of the Commitment Amount shall be in an aggregate minimum amount of \$500,000 and multiples of \$100,000 in excess of that amount. Company's notice to Administrative Agent (who will promptly notify each Lender of such notice) shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction shall be effective on the date specified in Company's notice and shall reduce the amount of the Commitment of each Lender proportionately to its Pro Rata Share; provided, however, that any such notice may be contingent on the occurrence of a refinancing or the consummation of a sale, transfer, lease or other

disposition of assets and may be revoked or the termination date deferred if the refinancing or sale, transfer, lease or other disposition of assets does not occur.

(iii) Mandatory Prepayments. The Loans shall be prepaid in the amounts and under the circumstances set forth below, all such prepayments to be applied as set forth below or as more specifically provided in subsection 2.4B(iv) and subsection 2.4D:

(a) Prepayments From Net Asset Sale Proceeds. No later than 5 Business Days after the date of receipt by Company or any of its Subsidiaries of any Net Asset Sale Proceeds in respect of any Asset Sale, Company shall prepay the Loans in an aggregate amount equal to such Net Asset Sale Proceeds.

(b) Prepayments from Net Insurance/Condemnation Proceeds. No later than 5 Business Days following the date of receipt by Administrative Agent or by Company or any of its Subsidiaries of any Net Insurance/Condemnation Proceeds that are required to be applied to prepay the Loans pursuant to the provisions of subsection 6.4C, Company shall prepay the Loans in an aggregate amount equal to the amount of such Net Insurance/Condemnation Proceeds.

(c) Return of Cash Collateral. No later than 5 Business Days following the date of receipt by Company or any of its Subsidiaries of any amounts that had been used to cash collateralize letters of credit with the proceeds of the Loans, Company shall prepay the Loans in an aggregate amount equal to such amount.

(d) [Reserved].

(e) [Reserved].

(f) Calculations of Net Proceeds Amounts; Additional Prepayments and Reductions Based on Subsequent Calculations. Concurrently with any prepayment of the Loans and/or reduction of the Commitment Amount pursuant to subsections 2.4B(iii)(a)-(b), Company shall deliver to Administrative Agent an Officer's Certificate demonstrating the calculation of the amount of the applicable Net Asset Sale Proceeds or Net Insurance/Condemnation Proceeds, as the case may be, that gave rise to such prepayment and/or reduction. In the event that Company shall subsequently determine that the actual amount was greater than the amount set forth in such Officer's Certificate, Company shall promptly make an additional prepayment of the Loans (and/or, if applicable, the Commitment Amount shall be permanently reduced) in an amount equal to the amount of such excess, and Company shall concurrently therewith deliver to Administrative Agent an Officer's

Certificate demonstrating the derivation of the additional amount resulting in such excess.

(g) Prepayments Due to Reductions of Commitment Amount. Company shall from time to time prepay the Loans to the extent necessary so that the aggregate outstanding principal amount of the Loans shall not at any time exceed the Commitment Amount then in effect.

(iv) Application of Prepayments.

(a) Application of Voluntary Prepayments. Any voluntary prepayments pursuant to subsection 2.4B(i) shall be applied to repay outstanding Loans to the full extent thereof (but without a corresponding permanent reduction of the Commitment Amount).

(b) Application of Mandatory Prepayments. Except as provided in subsection 2.4D, any amount required to be applied as a mandatory prepayment of the Loans and/or a reduction of the Commitment Amount pursuant to subsections 2.4B(iii)(a)-(b) shall be applied first, to prepay the Loans to the full extent thereof and to further permanently reduce the Commitment Amount by the amount of such prepayment, and second, to the extent of any remaining portion of such amount, to further permanently reduce the Commitment Amount to the full extent thereof. Any mandatory reduction of the Commitment Amount pursuant to this subsection 2.4B shall be in proportion to each Lender's Pro Rata Share.

(c) Application of Prepayments to Base Rate Loans and LIBOR Loans. Prepayments shall be applied first to Base Rate Loans to the full extent thereof before application to LIBOR Loans, in each case in a manner that minimizes the amount of any payments required to be made by Company pursuant to subsection 2.6D.

C. General Provisions Regarding Payments.

(i) Manner and Time of Payment. All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 2:00 P.M. (New York City time) on the date due at the Funding and Payment Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next succeeding Business Day. Company hereby authorizes Administrative Agent to charge its accounts with Administrative Agent in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).

(ii) Application of Payments to Principal and Interest. Except as provided in subsection 2.2C, all payments in respect of the principal amount of any Loan shall include payment of accrued interest on the principal amount being repaid or prepaid, and all such payments shall be applied to the payment of interest before application to principal.

(iii) Apportionment of Payments. Aggregate payments of principal and interest shall be apportioned among all outstanding Loans in each case proportionately to Lenders' respective Pro Rata Shares. Administrative Agent shall promptly distribute to each Lender, at the account specified in the payment instructions delivered to Administrative Agent by such Lender, its Pro Rata Share of all such payments received by Administrative Agent and the commitment fees of such Lender, if any, when received by Administrative Agent pursuant to subsection 2.3. Notwithstanding the foregoing provisions of this subsection 2.4C(iii), if, pursuant to the provisions of subsection 2.6C, any Notice of Conversion/Continuation is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any LIBOR Loans, Administrative Agent shall give effect thereto in apportioning interest payments received thereafter.

(iv) Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder, as the case may be.

(v) Notation of Payment. Each Lender agrees that before disposing of any Note held by it, or any part thereof (other than by granting participations therein), that Lender will make a notation thereon of all Loans evidenced by that Note and all principal payments previously made thereon and of the date to which interest thereon has been paid; provided that the failure to make (or any error in the making of) a notation of any Loan made under such Note shall not limit or otherwise affect the Obligations of Company hereunder or under such Note with respect to any Loan or any payments of principal or interest on such Note.

D. Application of Proceeds of Collateral and Payments after Event of Default. Upon the occurrence and during the continuation of an Event of Default, if requested by Requisite Lenders, or upon acceleration of the Obligations pursuant to Section 8, (a) all payments received by Administrative Agent, whether from Company, Holdings or any Subsidiary Guarantor or otherwise, and (b) all proceeds received by Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral under any Collateral Document may, in the discretion of Administrative Agent, be held by Administrative Agent as Collateral for, and/or (then or at any time thereafter) applied in full or in part by Administrative Agent, in each case in the following order of priority:

(i) to the payment of all costs and expenses of such sale, collection or other realization, all other expenses, liabilities and advances made or incurred by

Administrative Agent in connection therewith, and all amounts for which Administrative Agent is entitled to compensation (including the fees described in subsection 2.3), reimbursement and indemnification under any Loan Document and all advances made by Administrative Agent thereunder for the account of the applicable Loan Party, and to the payment of all costs and expenses paid or incurred by Administrative Agent in connection with the Loan Documents, all in accordance with subsections 9.4, 10.2 and 10.3 and the other terms of this Agreement and the Loan Documents;

(ii) thereafter, to the payment of all other Obligations for the ratable benefit of the holders thereof (subject to the provisions of subsection 2.4C(ii) hereof); and

(iii) thereafter, to the payment to or upon the order of such Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.5 Use of Proceeds.

A. [Reserved].

B. Loans. Company shall use the proceeds of the Loans solely in accordance with the Budget (including, subject to subsection 8.19, by reason of a Permitted Variance) to: (i) provide working capital to the Loan Parties (including the cash collateralization of letters of credit permitted to be issued on behalf of Company and in accordance with the Budget); (ii) fund interest, fees and other payments contemplated hereunder, including, without limitation, the Adequate Protection Payments; and (iii) fund costs of the administration of the Chapter 11 Case.

C. Margin Regulations. No portion of the proceeds of any borrowing under this Agreement shall be used by Company or any of its Subsidiaries in any manner that may cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of such Board, in each case as in effect on the date or dates of such borrowing and such use of proceeds.

2.6 Special Provisions Governing LIBOR Loans.

Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to LIBOR Loans as to the matters covered:

A. Determination of Applicable Interest Rate. On each Interest Rate Determination Date, Administrative Agent shall determine in accordance with the terms of this Agreement (which determination shall, absent manifest error, be conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Company and each applicable Lender.

B. Inability to Determine Applicable Interest Rate; Insufficiency of LIBOR Rate. In the event that Administrative Agent (i) shall have determined (which determination shall, absent manifest error, be conclusive and binding upon all parties hereto), on any Interest Rate Determination Date that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of LIBOR or (ii) shall have received written notice from the Requisite Lenders that the LIBOR Rate determined (or to be determined) for any Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their affected Loans during such Interest Period, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Company and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to the Loans in respect of which such determination was made shall be deemed to be for a Base Rate Loan.

C. Illegality of LIBOR Loans. In the event that on any date any Lender shall have determined (which determination shall, absent manifest error, be conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), then, and in any such event, such Lender shall be an “**Affected Lender**” and it shall within five (5) Business Days give notice (by telefacsimile or by telephone confirmed in writing) to Company and Administrative Agent of such determination. Administrative Agent shall promptly notify each other Lender of the receipt of such notice. Thereafter (a) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (b) to the extent such determination by the Affected Lender relates to a LIBOR Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or convert such Loan to, as the case may be) a Base Rate Loan, (c) the Affected Lender’s obligation to maintain its outstanding LIBOR Loans (the “**Affected Loans**”) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (d) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Company shall have the option, subject to the provisions of subsection 2.6D, to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above. Administrative Agent shall promptly notify each other Lender of the receipt of such notice. Except as provided in the immediately preceding sentence, nothing in this subsection 2.6C shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans in accordance with the terms of this Agreement.

D. Compensation For Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by that Lender pursuant to subsection 2.8, for all reasonable losses, expenses and liabilities (including any interest paid by that Lender to lenders of funds borrowed by it to make or carry its LIBOR Loans and any loss, expense or liability sustained by that Lender in connection with the liquidation or re-employment of such funds) which that Lender may sustain: (i) if for any reason (other than a default by that Lender) a borrowing of any LIBOR Loan does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request therefor, or a conversion to or continuation of any LIBOR Loan does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request therefor; (ii) if any prepayment or other principal payment or any conversion of any of its LIBOR Loans (including any prepayment or conversion occasioned by the circumstances described in subsection 2.6C) occurs on a date prior to the last day of an Interest Period applicable to that Loan; (iii) if any prepayment of any of its LIBOR Loans is not made on any date specified in a notice of prepayment given by Company; or (iv) as a consequence of any other default by Company in the repayment of its LIBOR Loans when required by the terms of this Agreement.

E. Booking of LIBOR Loans. Any Lender may make, carry or transfer LIBOR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of that Lender.

F. Assumptions Concerning Funding of LIBOR Loans. Calculation of all amounts payable to a Lender under this subsection 2.6 and under subsection 2.7A shall be made as though that Lender had funded each of its LIBOR Loans through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of LIBOR in an amount equal to the amount of such LIBOR Loan and having a maturity comparable to the relevant Interest Period, whether or not its LIBOR Loans had been funded in such manner.

G. LIBOR Loans After Default. Upon the election of Administrative Agent or Requisite Lenders during the continuation of an Event of Default, (i) Company may not elect to have a Loan be made or maintained as, or converted to, a LIBOR Loan after the expiration of any Interest Period then in effect for that Loan and (ii) subject to the provisions of subsection 2.6D, any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to a requested borrowing or conversion/continuation that has not yet occurred shall be deemed to be for a Base Rate Loan or, if the conditions to making a Loan set forth in subsection 4.2 cannot then be satisfied, to be rescinded by Company.

2.7 Increased Costs; Taxes; Capital Adequacy.

A. Compensation for Increased Costs. Subject to the provisions of subsection 2.7B (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law:

- (i) subjects such Lender to any additional Tax of any kind whatsoever (except for (A) Indemnified Taxes, (B) Taxes described in clauses (iii) and (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect

to this Agreement or any of its obligations hereunder or any payments to such Lender of principal, interest, fees or any other amount payable hereunder;

(ii) imposes, modifies or holds applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to LIBOR Loans that are reflected in the definition of LIBOR); or

(iii) imposes any other condition (other than with respect to Taxes) on or affecting such Lender or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining its Loans or Commitments or to reduce any amount received or receivable by such Lender with respect thereto; then, in any such case, Company shall promptly pay to such Lender, upon receipt of the statement referred to in subsection 2.8A, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender on an after-tax basis for any such increased cost or reduction in amounts received or receivable hereunder. Company shall not be required to compensate a Lender pursuant to this subsection 2.7A for any increased cost or reduction in respect of a period occurring more than six months prior to the date on which such Lender notifies Company of such Change in Law and such Lender's intention to claim compensation therefor, except, if the Change in Law giving rise to such increased cost or reduction is retroactive, no such time limitation shall apply so long as such Lender requests compensation within six months from the date on which the applicable Government Authority informed such Lender of such Change in Law.

B. Taxes.

(i) Payments to Be Free and Clear. Any and all payments by or on account of any Obligation of Company under this Agreement and the other Loan Documents shall be made free and clear of, and without any deduction or withholding on account of, any Indemnified Taxes or Other Taxes.

(ii) Grossing-up of Payments. If Company or any other Person is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by Company to Administrative Agent or any Lender under any of the Loan Documents:

(a) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it;

(b) Company shall timely pay any such Tax to the relevant Government Authority when such Tax is due, in accordance with Applicable Law;

(c) unless such Tax is an Excluded Tax, the sum payable by Company shall be increased to the extent necessary to ensure that, after making the required deductions (including deductions applicable to additional sums payable under this subsection 2.7B(ii)), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to the sum it would have received had no such deduction been required or made; and

(d) within 30 days after paying any sum from which it is required by law to make any such deduction, and within 30 days after the due date of payment of any Tax which it is required by clause (b) above to pay, Company shall deliver to Administrative Agent the original or a certified copy of an official receipt or other document satisfactory to the other affected parties to evidence the payment and its remittance to the relevant Government Authority.

(iii) Indemnification by Company. Company shall indemnify Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including for the full amount of any Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this subsection 2.7B(iii)) paid by Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Government Authority. A certificate as to the amount of such payment or liability delivered to Company by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If Company reasonably believes that any such Indemnified Taxes or Other Taxes were not correctly or legally asserted, Administrative Agent and/or each affected Lender will use reasonable efforts to cooperate with Company, at Company's expense, in pursuing a refund of such Indemnified Taxes or Other Taxes.

(iv) Tax Status of Lenders. Unless not legally entitled to do so:

(a) At such times as reasonably requested by Company, each Lender shall deliver such forms or other documentation prescribed by Applicable Law or reasonably requested by Company or Administrative Agent as will enable Company or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements;

(b) each Foreign Lender that is entitled to an exemption from or reduction of any Tax with respect to payments hereunder or under any other Loan Document shall deliver to Company and Administrative Agent, on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent, each in the reasonable exercise of its discretion), such properly completed and duly executed forms or other documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding;

(c) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, each Foreign Lender shall deliver to Company and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent, each in the reasonable exercise of its discretion), whichever of the following is applicable:

(1) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(2) properly completed and duly executed copies of Internal Revenue Service Form W-8ECI,

(3) in the case of a Foreign Lender claiming the benefits of the exemption “portfolio interest” under Section 881(c) of the Internal Revenue Code, (a) a duly executed certificate to the effect that such Foreign Lender is not (i) a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (ii) a ten-percent shareholder (within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code) of Company or Holdings or (iii) a controlled foreign corporation described in Section 881(c)(3)(C) of the Internal Revenue Code and (b) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN,

(4) properly completed and duly executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in any Tax,

(5) in each case together with such supplementary documentation as may be prescribed by Applicable Law to permit

Company and Administrative Agent to determine the withholding or deduction required to be made, if any;

(6) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, each Foreign Lender that does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender) shall deliver to Administrative Agent and Company (in such number of copies as shall be requested by the recipient), on or prior to the date such Foreign Lender becomes a Lender, or on such later date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and from time to time thereafter, as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion):

(7) duly executed and properly completed copies of the forms and statements required to be provided by such Foreign Lender under clause (c) of subsection 2.7B(iv), to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account and may be entitled to an exemption from or a reduction of the applicable Tax, and

(8) duly executed and properly completed copies of Internal Revenue Service Form W-8IMY (or any successor forms) properly completed and duly executed by such Foreign Lender, together with any information, if any, such Foreign Lender chooses to transmit with such form that is reasonably acceptable to Company and Administrative Agent, and any other certificate or statement of exemption required under the Internal Revenue Code or the regulations thereunder, to establish that such Foreign Lender is not acting for its own account with respect to a portion of any such sums payable to such Foreign Lender;

(9) without limiting the generality of the foregoing, in the event that Company is resident for tax purposes in the United States, any Lender that is not a Foreign Lender and has not otherwise established to the reasonable satisfaction of Company and Administrative Agent that it is an exempt recipient (as defined in Section 6049(b)(4) of the Internal Revenue Code and the United States Treasury Regulations thereunder) shall deliver to Company and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by Applicable Law or upon the

request of Company or Administrative Agent), duly executed and properly completed copies of Internal Revenue Service Form W-9;

(10) without limiting the generality of the foregoing, if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Company and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Company or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Company or Administrative Agent as may be necessary for Company and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment (solely for purposes of this clause (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement); and

(11) without limiting the generality of the foregoing, each Lender hereby agrees, from time to time after the initial delivery by such Lender of such forms, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence so delivered obsolete or inaccurate in any material respect, that such Lender shall promptly (1) deliver to Administrative Agent and Company two original copies of renewals, amendments or additional or successor forms, properly completed and duly executed by such Lender, together with any other certificate or statement of exemption required in order to confirm or establish that such Lender is entitled to an exemption from or reduction of any Tax with respect to payments to such Lender under the Loan Documents and, if applicable, that such Lender does not act for its own account with respect to any portion of such payment, or (2) notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence.

(v) Treatment of Certain Refunds. If Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by Company or with respect to which Company has paid additional amounts pursuant to this subsection 2.7B, it shall pay to Company an amount equal to such refund (but only to the extent of

indemnity payments made, or additional amounts paid, by Company under this subsection 2.7B with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Government Authority with respect to such refund), provided that Company, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to Company (plus any penalties, interest or other charges imposed by the relevant Government Authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Government Authority. This paragraph shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Company or any other Person.

C. Capital Adequacy Adjustment. If any Lender shall have determined, acting reasonably, that any Change in Law regarding capital adequacy or liquidity requirements has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling corporation could have achieved but for such Change in Law (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy and liquidity requirements), then from time to time, within ten Business Days after receipt by Company from such Lender of the statement referred to in subsection 2.8A, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Company shall not be required to compensate a Lender pursuant to this subsection 2.7C for any reduction in respect of a period occurring more than six months prior to the date on which such Lender notifies Company of such Change in Law and such Lender's intention to claim compensation therefor, except, if the Change in Law giving rise to such reduction is retroactive, no such time limitation shall apply so long as such Lender requests compensation within six months from the date on which the applicable Government Authority informed such Lender of such Change in Law or such Lender otherwise became aware of such Change in Law.

2.8 Statement of Lenders; Obligation of Lenders to Mitigate.

A. Statements. Each Lender claiming compensation or reimbursement pursuant to subsection 2.6D, 2.7 or 2.8B shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis of the calculation of such compensation or reimbursement, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

B. Mitigation. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering the Loans of such Lender, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under subsection 2.7, it will use reasonable efforts to make, issue, fund or maintain the Commitments of such Lender or the Loans of such Lender through another lending office of such Lender, if (i)

as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to subsection 2.7 would be materially reduced and (ii) as determined by such Lender acting reasonably, such action would not otherwise be disadvantageous to such Lender; provided that such Lender will not be obligated to utilize such other lending office pursuant to this subsection 2.8B unless Company agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other lending office as described above.

2.9 Replacement of a Lender.

If Company receives a statement of amounts due pursuant to subsection 2.8A from a Lender, a Lender becomes a Defaulting Lender, a Lender (a “**Non-Consenting Lender**”) refuses to consent to an amendment, modification or waiver of this Agreement that has been consented to by the Requisite Lenders but, pursuant to subsection 10.6, also requires consent of 100% of the Lenders or 100% of the Lenders with Obligations directly affected or a Lender becomes an Affected Lender (any such Lender, a “**Subject Lender**”), so long as (i) no Potential Event of Default or Event of Default shall have occurred and be continuing and Company has obtained a commitment from another Lender or an Eligible Assignee to purchase at par the Subject Lender’s Loans and assume the Subject Lender’s Commitments and all other obligations of the Subject Lender hereunder, and (ii), if applicable, the Subject Lender is unwilling to withdraw the notice delivered to Company pursuant to subsection 2.8 upon 10 days prior written notice to the Subject Lender and Administrative Agent, Company may require the Subject Lender to assign all of its Loans and Commitments to such other Lender, Lenders, Eligible Assignee or Eligible Assignees pursuant to the provisions of subsection 10.1B; provided that, prior to or concurrently with such replacement, (1) the Subject Lender shall have received payment in full of all principal, interest, fees and other amounts (including all amounts under subsections 2.6D, 2.7 and/or 2.8B (if applicable)) through such date of replacement and a release from its obligations under the Loan Documents, (2) the processing fee required to be paid by subsection 10.1B(i) shall have been paid to Administrative Agent, (3) all of the requirements for such assignment contained in subsection 10.1B, including, without limitation, the consent of Administrative Agent (if required) and the receipt by Administrative Agent of an executed Assignment Agreement executed by the assignee (Administrative Agent being hereby authorized to execute any Assignment Agreement on behalf of a Subject Lender relating to the assignment of Loans and/or Commitments of such Subject Lender pursuant to this subsection 2.9) and other supporting documents, have been fulfilled, and (4) in the event such Subject Lender is a Non-Consenting Lender, each assignee shall consent, at the time of such assignment, to each matter in respect of which such Subject Lender was a Non-Consenting Lender and Company also requires each other Subject Lender that is a Non-Consenting Lender to assign its Loans and Commitments. For the avoidance of doubt, if a Lender is a Non-Consenting Lender solely because it refused to consent to an amendment, modification or waiver that required the consent of 100% of Lenders with Obligations directly affected thereby (which amendment, modification or waiver did not accordingly require the consent of 100% of all Lenders), the Loans and Commitments of such Non-Consenting Lender that are subject to the assignments required by this subsection 2.9 shall include only those Loans and Commitments that constitute the Obligations directly affected by the amendment, modification or waiver to which such Non-Consenting Lender refused to provide its consent.

2.10 Defaulting Lenders.

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

A. the commitment fees payable pursuant to subsection 2.3A shall cease to accrue on the Commitment of such Lender so long as it is a Defaulting Lender;

B. [Reserved];

C. [Reserved];

D. so long as any Lender is a Defaulting Lender, the Commitment and Loans of such Defaulting Lender shall be excluded for the purposes of making a determination of “Requisite Lenders”; and

E. any amount payable to such Defaulting Lender hereunder that does not cease to be owed as provided hereby (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to subsection 10.5) may, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated non-interest bearing account and, subject to any Applicable Law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iii) third, if so determined by the Administrative Agent and Company, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (iv) fourth, pro rata, to the payment of any amounts owing to Company or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Company or any Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement and (v) fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans which a Defaulting Lender has funded and (y) made at a time when the conditions set forth in subsection 4.2, are satisfied, such payment shall be applied solely to prepay the Loans of all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans owed to any Defaulting Lender.

The rights and remedies against a Defaulting Lender under this subsection 2.10 are in addition to other rights and remedies that Company, the Administrative Agent, and the non-Defaulting Lenders may have against such Defaulting Lender. The arrangements permitted or required by this subsection 2.10 shall be permitted under this Agreement, notwithstanding any limitation on Liens or the pro rata sharing provisions or otherwise.

2.11 Extension of Commitment Termination Date.

Company shall be entitled to request on two (2) separate occasions an extension of the then scheduled Commitment Termination Date for a period of thirty (30) days from the

then scheduled Commitment Termination Date. Any such extension of the Commitment Termination Date shall be subject to satisfaction of the following conditions precedent: (a) the Requisite Lenders shall have consented in writing to such requested extension and (b) the Administrative Agent shall have received a certificate of a Responsible Officer of Company certifying that, as of the then scheduled Commitment Termination Date, no Event of Default or Potential Event of Default has occurred and is continuing. Upon satisfaction of the preceding conditions precedent, the Commitment Termination Date will be deemed extended for a period of thirty (30) days from the then scheduled Commitment Termination Date applicable to all Lenders. In no event shall the Commitment Termination Date be extended to a date falling more than one hundred eighty (180) days after the Closing Date.

Section 3. RESERVED

Section 4. CONDITIONS TO LOANS

4.1 Conditions to Closing Date.

The occurrence of the Closing Date and the obligations of Lenders to make the Loans are, in addition to the conditions precedent specified in subsection 4.2, subject to prior or concurrent satisfaction (or waiver) of the following conditions:

A. Loan Party Documents. On or before the Closing Date, Company shall, and shall cause each other Loan Party to, deliver to Administrative Agent with such number of originally executed copies as may be requested by Administrative Agent, the following with respect to Company or such Loan Party, as the case may be, each, unless otherwise noted, dated the Closing Date:

(i) Copies of the Organizational Documents of such Person, certified by the Secretary of State of its jurisdiction of organization or, if such document is of a type that may not be so certified, certified by the secretary or similar officer of the applicable Loan Party, together with a good standing certificate from the Secretary of State of its jurisdiction of organization and, to the extent the failure to be so qualified would reasonably be expected to have a Material Adverse Effect, each other state in which such Person is qualified to do business and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each of such jurisdictions, each dated a recent date prior to the Closing Date;

(ii) Resolutions of the Governing Body of such Person approving and authorizing the execution, delivery and performance of those certain Loan Documents to be executed and delivered on the Closing Date to which it is a party, certified as of the Closing Date by the secretary or similar officer of such Person as being in full force and effect without modification or amendment;

(iii) Signature and incumbency certificates of the officers of such Person executing those certain Loan Documents to be executed and delivered on the Closing Date to which it is a party;

(iv) Executed copies (or to the extent requested by Administrative Agent originals) of those certain Loan Documents to be executed and delivered on the Closing Date to which such Person is a party; and

(v) Such other documents as Administrative Agent may reasonably request.

B. Fees. Company shall have paid to Administrative Agent, for distribution (as appropriate) to Administrative Agent and Lenders, the fees payable on the Closing Date referred to in subsection 2.3 and expenses payable under subsection 10.2, to the extent invoiced on or prior to the Closing Date.

C. Corporate and Capital Structure; Ownership. The corporate organizational structure, capital structure and ownership of Holdings and its Subsidiaries shall be as set forth on Schedule 4.1C annexed hereto.

D. Representations and Warranties; Performance of Agreements. Company shall have delivered to Administrative Agent an Officer's Certificate in the form attached as Exhibit VIII to the effect that the representations and warranties in Section 5 are true and correct in all material respects on and as of the Closing Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date); provided that, if a representation and warranty is qualified as to materiality, the applicable materiality qualifier set forth above shall be disregarded with respect to such representation and warranty.

E. Financial Statements; Pro Forma Financial Statements. On or before the Closing Date, Administrative Agent shall have received from Company (i) audited financial statements of Company and its Subsidiaries for the Fiscal Year 2016, consisting of balance sheets and the related combined statements of operations and cash flows for such Fiscal Year and (ii) unaudited balance sheets of Company and its Subsidiaries as at March 31, 2017 and the related statement of income and statement of cash flows for the three-month period then ended, all in reasonable detail and certified by the chief financial officer of Company, respectively, that they fairly present in all material respects the financial condition of Company and its Subsidiaries as at the date indicated and the results of operations and cash flows for the periods indicated, subject to the absence of footnotes and changes resulting from audit and normal year-end adjustments.

F. [Reserved].

G. [Reserved].

H. [Reserved]

I. [Reserved]

J. Security Interests in Personal Property. Holdings, Company and Subsidiary Guarantors shall have taken or caused to be taken all such actions, executed and

delivered or caused to be executed and delivered all such agreements, documents and instruments, and made or caused to be made all such filings and recordings (other than the filing or recording of items described in clauses (ii), (iii) and (iv) below) that may be necessary or, in the reasonable opinion of Administrative Agent, desirable in order to confirm or create, as the case may be, in favor of Administrative Agent acting as agent for and representative of Lenders a valid and (upon such filing and recording) perfected First Priority security interest in the entire personal property Collateral, to the extent required by the Collateral Documents. Such actions shall include the following:

(i) Stock Certificates and Instruments. To the extent not already in the possession of the Administrative Agent, delivery to Administrative Agent of (a) certificates (which certificates shall be accompanied by irrevocable undated stock powers, duly endorsed in blank) representing all Capital Stock pledged pursuant to the Holdings Pledge Agreement and the Security Agreement and (b) all promissory notes or other instruments (duly endorsed, where appropriate) evidencing any Collateral required to be pledged under the Collateral Documents;

(ii) Lien Searches and UCC Termination Statements. Delivery to Administrative Agent of (a) the results of a recent search of all effective UCC financing statements and all judgment and tax lien filings which may have been made with respect to any personal property of any Loan Party, together with copies of all such filings disclosed by such search, and (b) duly completed UCC termination statements, and authorization of the filing thereof from the applicable secured party, as may be necessary to terminate any effective UCC financing statements disclosed in such search (other than any such financing statements in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement).

(iii) UCC Financing Statements. Delivery to Administrative Agent of duly completed UCC financing statements for each Loan Party with respect to all personal property Collateral of such Loan Party, for filing in all jurisdictions as may be necessary or, in the reasonable opinion of Administrative Agent, desirable to perfect the security interests created in such Collateral pursuant to the Collateral Documents; and

(iv) Cover Sheets, etc. Delivery to Administrative Agent of all cover sheets or other documents or instruments required to be filed with any IP Filing Office in order to create or perfect Liens in respect of any IP Collateral, together with releases duly executed (if necessary) of security interests by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective filings in any IP Filing Office in respect of any IP Collateral (other than any such filings in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement).

K. [Reserved]

L. [Reserved]

M. Evidence of Insurance. Administrative Agent shall have received a certificate from Company's insurance broker or other evidence reasonably satisfactory to it reflecting that all insurance required to be maintained pursuant to subsection 6.4 is in full force and effect and that Administrative Agent on behalf of Lenders has been named as additional insured and/or loss payee thereunder to the extent required under subsection 6.4.

N. [Reserved]

O. [Reserved]

P. [Reserved]

Q. [Reserved]

R. [Reserved]

S. [Reserved]

T. [Reserved]

U. Interim Order. Entry by the Bankruptcy Court of the Interim Order, by no later than three (3) Business Days after the Petition Date, in form and substance satisfactory to the Administrative Agent and the Lenders, among other things, (i) approving the transactions contemplated hereby, (ii) approving the Adequate Protection Payments and certain other adequate protection in favor of the Pre-Petition Senior Agent and Pre-Petition Senior Lenders; (iii) granting the Administrative Agent a First Priority perfected security interest (including priming Liens) in the Collateral on behalf of the Lenders (subject, as to priority only, to the Carve-Out (including with respect to Case Professionals, an amount not to exceed the Case Professionals Carve-Out Amount)) and (iv) modifying the automatic stay to permit the creation and perfection of the Administrative Agent's and Lenders' Liens and automatically vacating the automatic stay to permit enforcement of the Administrative Agent's and the Lenders' default-related rights and remedies under this Agreement, the other Loan Documents and Applicable Law.

V. Petition Date; First Day Orders. The Petition Date shall have occurred and the "first day" orders entered in the Chapter 11 Case shall have been in form and substance reasonably satisfactory to the Administrative Agent.

W. Appointment of Trustee. No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in the Chapter 11 Cases.

X. Budget. The Administrative Agent and the Lenders shall have received, and the Administrative Agent and the Lenders shall be satisfied with, the Initial Budget.

Y. Other Information. The Administrative Agent and the Lenders shall have received any other information (financial or otherwise) reasonably requested by the

Administrative Agent or such Lender, which information shall be in form and substance reasonably satisfactory to the Administrative Agent and the Lenders.

4.2 Conditions to All Loans.

The obligation of each Lender to make its Loans on each Funding Date are subject to the following further conditions precedent:

A. Administrative Agent shall have received before that Funding Date, in accordance with the provisions of subsection 2.1B, a duly executed Notice of Borrowing, in each case signed by a Responsible Officer.

B. As of that Funding Date:

(i) The representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, the materiality qualifier set forth above shall be disregarded with respect to such representation and warranty for purposes of this condition;

(ii) No event shall have occurred and be continuing or would result from the consummation of the borrowing contemplated by such Notice of Borrowing that would constitute an Event of Default or a Potential Event of Default;

(iii) [Reserved];

(iv) before and after giving effect to the requested borrowing of Loans on such Funding Date, the aggregate outstanding principal amount of the Loans shall not exceed the Commitment Amount;

(v) (A) for Loans made on or after the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order, (B) the Interim Order or the Final Order, as the case may be, shall not have been vacated, reversed, modified or amended without the Requisite Lenders' consent or shall otherwise not be in full force and effect, (C) no motion for reconsideration of any such order shall have been timely filed and remain pending and (D) no appeal of any such order shall have been timely filed and remain pending or such order in any respect is the subject of an effective stay pending appeal (whether statutory or otherwise); and

(vi) each of the orders entered by the Bankruptcy Court on or prior to the entry of the Final Order shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, including without limitation, the provision,

by and through such orders of adequate protection for the Pre-Petition Senior Agent and the Pre-Petition Senior Lenders.

Section 5. COMPANY'S REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make the Loans, Company represents and warrants to each Lender:

5.1 Organization, Powers, Qualification, Good Standing, Business and Subsidiaries.

A. Organization and Powers. Each of Holdings and Company is a limited liability company or corporation, respectively, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as specified in Schedule 5.1 annexed hereto. Each of Holdings and Company has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

B. Qualification and Good Standing. Each of Holdings and Company is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had and could not reasonably be expected to result in a Material Adverse Effect.

C. Conduct of Business. Company and its Subsidiaries are engaged only in the businesses permitted to be engaged in pursuant to subsection 7.11 and Holdings is engaged only in the business permitted to be engaged in pursuant to subsection 8.13.

D. Capital Stock. The Capital Stock of Company and each of its Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and none of such Capital Stock constitutes Margin Stock.

E. Subsidiaries. All of the Subsidiaries of Company and their jurisdictions of organization are identified in Schedule 5.1 annexed hereto, as said Schedule 5.1 may be supplemented from time to time pursuant to the provisions of subsection 6.1(xiv). Each of the Subsidiaries of Company identified in Schedule 5.1 annexed hereto (as so supplemented) is a corporation, partnership, trust or limited liability company duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization set forth therein, has all requisite power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted, and is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case except where failure to be so qualified or in good standing or a lack of such power and authority has not had and could not reasonably be expected to result in a Material Adverse Effect. Schedule 5.1 annexed hereto (as so supplemented) correctly sets forth, as of the Closing Date, the ownership interest of Company and each of its Subsidiaries in each of the Subsidiaries of Company identified therein.

5.2 Authorization of Borrowing, etc.

A. Authorization of Borrowing. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action on the part of each Loan Party that is a party thereto.

B. No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents and the consummation of the transactions contemplated by the Loan Documents do not and will not (i) violate any provision of any law or any governmental rule or regulation applicable to Holdings, Company or any of its Subsidiaries, the Organizational Documents of Holdings, Company or any of its Subsidiaries or any order, judgment or decree of any court or other Government Authority binding on Holdings, Company or any of its Subsidiaries, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings, Company or any of its Subsidiaries, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings, Company or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent on behalf of Lenders), or (iv) require any approval of stockholders or any approval or consent of any Person under any material Contractual Obligation of Holdings, Company or any of its Subsidiaries, except for such approvals or consents (x) which have been obtained or will be obtained on or before the Closing Date or (y) the absence of which could not reasonably be expected to have a Material Adverse Effect.

C. Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents and the consummation of the transactions contemplated by the Loan Documents do not and will not require any Governmental Authorization, except for (i) Governmental Authorizations as have been obtained or will be obtained on or before the Closing Date, (ii) filings in connection with perfecting the Liens securing the Collateral and (iii) the Interim Order and the Final Order.

D. Binding Obligation. Each of the Loan Documents has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

E. Valid Issuance of Holdings Common Stock. The Holdings Common Stock is duly and validly issued, fully paid and nonassessable. The issuance and sale of such Holdings Common Stock was either (a) registered or qualified under applicable federal and state securities laws or (b) exempt therefrom.

5.3 Financial Condition; Budget.

A. Company has heretofore delivered to Administrative Agent, at a Lender's request, the financial statements and information required under subsection 4.1E. All such statements other than pro forma or projected financial statements were prepared in conformity

with GAAP and fairly present, in all material respects, the financial position (on a consolidated basis) of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a consolidated basis) of the entities described therein for each of the periods then ended, subject to, in the case of any such unaudited financial statements, to changes resulting from audit, absence of footnotes and normal year-end adjustments. As of the Closing Date, neither Company nor any of its Subsidiaries has (and immediately following the funding of the Loans will not have) any Contingent Obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto or on Schedule 7.4 annexed hereto and, as of any Funding Date subsequent to the Closing Date, is not reflected in the most recent financial statements delivered to Administrative Agent pursuant to subsection 6.1 or the notes thereto or on Schedule 7.4 annexed hereto and that, in any such case, is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries (except to the extent incurred after the period covered by such financial statements and such incurrence is permitted by this Agreement and except for any such matter that need not in accordance with GAAP, be reflected in such financial statements and which has been otherwise expressly disclosed to Administrative Agent in writing).

B. The Company has heretofore furnished the Administrative Agent the Budget, and any projections contained in such Budget are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

5.4 No Material Adverse Change; No Restricted Junior Payments.

Since December 31, 2016, other than the filing of the Chapter 11 Case and as set forth on Schedule 5.4, no event or change has occurred that has resulted in or evidences, either in any case or in the aggregate, a Material Adverse Effect that is continuing. Neither Company nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted by subsection 7.5.

5.5 Title to Properties; Liens; Real Property; Intellectual Property.

A. Title to Properties; Liens. Company and its Subsidiaries have (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the financial statements referred to in subsection 5.3 or in the most recent financial statements delivered to the Administrative Agent pursuant to subsection 6.1 (subject to Liens permitted by subsection 7.2A), in each case except (A) for assets disposed of since the date of such financial statements in the ordinary course of business, (B) as otherwise permitted under subsection 7.7, or (C) where failure to have such title could not reasonably be expected, individually or in the

aggregate, to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

B. Real Property. As of the Closing Date, Schedule 5.5B annexed hereto contains a true, accurate and complete list of (i) all fee interests in any Real Property Assets and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Property Asset, regardless of whether a Loan Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Except as specified in Schedule 5.5B annexed hereto, as of the Closing Date each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect in accordance with its terms and no defaults by any Loan Party currently exist thereunder, and Company does not have knowledge of any defaults by any third party currently existing thereunder, in any case where any such defaults could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Each such agreement constitutes the legally valid and binding obligation of each applicable Loan Party, enforceable against such Loan Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

C. Intellectual Property. As of the Closing Date, Company and its Subsidiaries own or have the right to use, all Intellectual Property used in the conduct of their business, except where the failure to own or have such right to use in the aggregate could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Company know of any valid basis for any such claim, except for such claims that in the aggregate could not reasonably be expected to result in a Material Adverse Effect. The use of such Intellectual Property by Company and its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All federal, state and foreign registrations of and applications for Intellectual Property, and all unregistered Intellectual Property, that are owned or licensed by Company or any of its Subsidiaries on the Closing Date and that are material to their respective operations are described on Schedule 5.5C annexed hereto.

5.6 Litigation; Adverse Facts.

Other than the Chapter 11 Case or as described on Schedule 5.4 annexed hereto, there are no Proceedings (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of Company, threatened against Company or any of its Subsidiaries or any property or operations of Company or any of its Subsidiaries and that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither Company nor any of its Subsidiaries (i) is in violation of any Applicable Laws (including applicable Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (ii) is subject to or in default with respect to any final judgments, writs, injunctions, or decrees of any

court or other Government Authority that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

5.7 Payment of Taxes.

Except to the extent permitted by subsection 6.3, all tax returns and reports of Holdings, Company and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Holdings, Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable, except where failure to do so could not reasonably be expected to have a Material Adverse Effect. Company knows of no proposed Tax assessment for prior periods against Company or any of its Subsidiaries that will not be promptly paid or contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided that such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor during the period that such contest is pending.

5.8 Performance of Agreements.

Other than defaults under the Pre-Petition Senior Credit Agreement and the Subordinated Note Documents, neither Company nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, except in either case where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to result in a Material Adverse Effect.

5.9 Governmental Regulation.

Neither Company nor any of its Subsidiaries is subject to regulation under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Subsidiaries is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

5.10 Securities Activities.

A. Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

B. Following application of the proceeds of each Loan, not more than 25% of the value of the assets (either of Company only or of Company and its Subsidiaries on a consolidated basis) subject to the provisions of subsection 7.2 or 7.7 or subject to any restriction contained in any agreement or instrument, between Company and any Lender or any Affiliate of

any Lender, relating to Indebtedness and within the scope of subsection 8.2, will be Margin Stock.

5.11 Employee Benefit Plans.

A. Company, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, except for instances of non-compliance that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect, and have performed all their obligations under each Employee Benefit Plan, except for instances of non-performance that individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect. Except for any formal written qualification requirement with respect to which the remedial amendment period set forth in Section 401(b) of the Internal Revenue Code, and regulations and rulings thereunder, has not expired, each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified.

B. No ERISA Event has occurred or is reasonably expected to occur.

C. Except to the extent required under Section 4980B of the Internal Revenue Code or except as set forth in Schedule 5.11 annexed hereto as the same may be supplemented from time to time by Company, no Employee Benefit Plan provides health or life insurance benefits (through the purchase of insurance or otherwise) for any retired or former employee of Company or any of its Subsidiaries.

D. As of the most recent valuation date for any Pension Plan, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed an amount that could reasonably be expected to result in a Material Adverse Effect.

E. Except as described on Schedule 5.11, as of the Closing Date, there are no Multiemployer Plans. From and after the Closing Date, as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Company, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA, does not exceed an amount that could reasonably be expected to have a Material Adverse Effect.

F. As of the Closing Date, Company and its Subsidiaries have made full payment when due of all required contributions to any Foreign Plan unless such nonpayment could not reasonably be expected to cause a Material Adverse Effect.

5.12 Certain Fees.

No broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby, and Company hereby indemnifies

Lenders against, and agrees that it will hold Lenders harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel in accordance with subsection 10.3) arising in connection with any such claim, demand or liability.

5.13 Environmental Protection.

(i) Neither Company nor any of its Subsidiaries is subject to any outstanding written order, consent decree or settlement agreement with any Person in respect of their Facilities or operations relating to (a) any Environmental Law, (b) any Environmental Claim, or (c) any Hazardous Materials Activity, that, in each case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(ii) Neither Company nor any of its Subsidiaries has received any letter or request for information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(iii) To Company's knowledge, there are and have been no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Company or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(iv) Neither Company nor any of its Subsidiaries nor, to Company's knowledge, any predecessor of Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Company's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste that requires a permit under 40 C.F.R. Parts 262, 264 or 265 or any comparable state Environmental Law unless such permit has been obtained and is in full force and effect, in each case, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(v) Compliance with all current or reasonably foreseeable future requirements pursuant to or under applicable Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

5.14 Employee Matters.

There is no strike or work stoppage in existence or threatened involving Company or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect.

5.15 [Reserved].

5.16 Matters Relating to Collateral.

A. Creation, Perfection and Priority of Liens. The Collateral Documents, taken together with the Interim Order, are effective to create in favor of the Administrative Agent (for its benefit and the benefit of the Lenders) a legal, valid, continuing and enforceable First Priority security interest in the Collateral subject, as to priority only, to the Carve-Out, Permitted Encumbrances and Liens permitted pursuant to subsection 7.2A (other than clause (iii) thereof). Pursuant to the terms of the Interim Order and/or the Final Order, no filing or other action will be necessary to perfect or protect such Liens and security interests.

B. Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any Government Authority is required for either (i) the pledge or grant by any Loan Party of the Liens created in favor of Administrative Agent pursuant to any of the Collateral Documents or (ii) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to any of the Collateral Documents or created or provided for by Applicable Law), except (x) for filings or recordings contemplated by the Collateral Documents, (y) as may be required, in connection with the disposition of any Pledged Collateral, by laws generally affecting the offering and sale of securities and (z) the Interim Order and Final Order.

C. [Reserved].

D. Margin Regulations. The pledge of the Pledged Collateral pursuant to the Collateral Documents does not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

E. Information Regarding Collateral. All information supplied to Administrative Agent by or on behalf of any Loan Party with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

5.17 Disclosure.

As of the Closing Date, no representation or warranty of Holdings, Company or any of its Subsidiaries contained in any Loan Document, or in any other document, certificate or written statement furnished to Lenders by or on behalf of Holdings, Company or any of their Affiliates for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by it and not otherwise expressly disclosed in any other of the above-described documents) necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable

exercise of diligence be known) to Company (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

5.18 Subordinated Note Documents.

Company has delivered to Administrative Agent complete and correct copies of the Subordinated Note Documents and of all exhibits and schedules thereto.

5.19 [Reserved].

5.20 Foreign Assets Control Regulations, etc.

A. Neither the making of the Loans to Company nor its use of the proceeds thereof will violate (i) the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any enabling legislation or executive order relating thereto or (ii) all other applicable anti-money laundering statutes of the jurisdictions where any Loan Party conducts business, the rules and regulations thereunder, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Authority, and any regulations promulgated pursuant thereto by any Government Authority governing terrorist acts. Without limiting the foregoing, neither Company nor any of its Subsidiaries or Affiliates (a) is or will become a Person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such Person. Company and its Subsidiaries and Affiliates are in compliance, in all material respects, with the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001).

B. No part of the proceeds from the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such act applies to the Loan Parties.

5.21 Reorganization Matters.

A. The Chapter 11 Case was commenced on the Petition Date in accordance with Applicable Law. Proper notice for (i) the motion seeking approval of the Loan Documents, the Interim Order and the Final Order, (ii) the hearing for the approval of the Interim Order, and (iii) the hearing for the approval of the Final Order, in each case, has been or will be given. Company shall give, on a timely basis as specified in the Interim Order and/or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order and/or Final Order, as applicable.

B. After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expense claims and unsecured claims against Company now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out (including, with respect to Case Professionals, an amount not to exceed the Case Professionals Carve-Out Amount).

C. The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without the consent of the Administrative Agent.

D. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent and the Lenders shall be entitled to immediate payment of such Obligations in accordance with the terms of Section 8 and to enforce the remedies provided for hereunder or under Applicable Law.

Section 6. COMPANY'S AFFIRMATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations (other than Unasserted Obligations), unless the Administrative Agent and the Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 Financial Statements and Other Reports.

Company will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Company will deliver to Administrative Agent (with sufficient copies for delivery to all Lenders if so requested by Administrative Agent):

- (i) Events of Default, etc.: promptly upon any officer of Company obtaining knowledge (a) of any condition or event that constitutes an Event of Default or Potential Event of Default, or becoming aware that any Lender has given any notice (other than to Administrative Agent) or taken any other action with respect to a claimed Event of Default or Potential Event of Default, (b) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 8.2, or (c) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of

such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Event of Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(ii) Monthly and Quarterly Financials: as soon as available and in any event within 30 days after the end of each month and within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, (a) the consolidated balance sheet of Company and its Subsidiaries as at the end of such fiscal period and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such fiscal period and for the period from the beginning of the then current Fiscal Year to the end of such fiscal period, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, to the extent prepared for such fiscal period, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes, and (b) a narrative report describing the operations of Company and its Subsidiaries in the form prepared for presentation to senior management for such fiscal period and for the period from the beginning of the then current Fiscal Year to the end of such fiscal period;

(iii) Year-End Financials: as soon as available and in any event within 90 days after the end of each Fiscal Year (or, in the case of the Fiscal Year ending December 31, 2016, within 120 days after the end of such Fiscal Year), (a) the consolidated and, to the extent otherwise prepared by Company, consolidating balance sheets of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated and, to the extent otherwise prepared by Company, consolidating statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, (b) a narrative report describing the operations of Company and its Subsidiaries in the form prepared for presentation to senior management for such Fiscal Year, and (c) in the case of such consolidated financial statements, a report thereon of Mayer, Hoffman, McCann P.C. or other independent certified public accountants of recognized national standing selected by Company and reasonably satisfactory to Administrative Agent, which report shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a

basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(iv) Officer's Certificates: together with each delivery of quarterly financial statements delivered pursuant to subdivision (ii) above and annual financial statements delivered pursuant to subdivision (iii) above, an Officer's Certificate of Company stating that the signer has reviewed the terms of this Agreement and has made, or caused to be made under his supervision, a review in reasonable detail of the transactions and condition of Company and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence at the end of such accounting period, and that the signer does not have knowledge of the existence as at the date of such Officer's Certificate, of any condition or event that constitutes an Event of Default or Potential Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Company has taken, is taking and proposes to take with respect thereto;

(v) Reconciliation Statements: if, as a result of any change in accounting principles and policies from those used in the preparation of the audited financial statements referred to in subsection 5.3, the consolidated financial statements of Company and its Subsidiaries delivered pursuant to subdivisions (ii), (iii) or (xi) of this subsection 6.1 will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then (a) together with the first delivery of financial statements pursuant to subdivision (ii), (iii) or (xi) of this subsection 6.1 following such change, consolidated financial statements of Company and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) the two full Fiscal Years immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (b) together with each delivery of financial statements pursuant to subdivision (ii), (iii) or (xi) of this subsection 6.1 following such change, if required pursuant to subsection 1.2, a written statement of the chief accounting officer or chief financial officer of Company setting forth the differences which would have resulted if such financial statements had been prepared without giving effect to such change;

(vi) Accountants' Reports: promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Company by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Company and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their annual audit;

(vii) SEC Filings and Press Releases: promptly upon their becoming available, copies of (a) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Company or any of its Subsidiaries with any securities exchange or with the SEC or any governmental or private regulatory authority, and (b) all press releases and other statements that Company or any of its Subsidiaries would be required, if they were reporting issuers, to make available generally concerning material developments in the business of Company or any of its Subsidiaries;

(viii) Litigation or Other Proceedings: promptly upon any Officer of Company obtaining knowledge of (1) the institution of any Proceeding against Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries not previously disclosed in writing by Company to Lenders or (2) any material development in any Proceeding that, in any case:

(x) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect; or

(y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(ix) ERISA Events: promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that results in or could reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates, in excess of \$3,500,000, a written notice specifying the nature thereof, what action Company, such applicable Subsidiary or ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(x) ERISA Notices: with reasonable promptness, copies of (a) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (b) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan (other than a Multiemployer Plan) as Administrative Agent shall reasonably request;

(xi) [Reserved];

(xii) Insurance: as soon as practicable after any material change in insurance coverage maintained by or for Company and its Subsidiaries notice thereof to Administrative Agent specifying the changes and reasons therefor;

(xiii) Governing Body: with reasonable promptness, written notice of any change in the Governing Body of Company;

(xiv) New Subsidiaries: promptly upon any Person becoming a Subsidiary of Company, a written notice setting forth with respect to such Person (a) the date on which such Person became a Subsidiary of Company and (b) all of the data required to be set forth in Schedule 5.1 annexed hereto with respect to all Subsidiaries of Company (it being understood that such written notice shall be deemed to supplement Schedule 5.1 annexed hereto for all purposes of this Agreement from and after the date of delivery of such notice);

(xv) Notices from Holders of Subordinated Indebtedness: promptly, upon receipt, copies of all material notices from holders of Subordinated Indebtedness, including without limitation, holders of the Subordinated Notes, or a trustee, agent or other representative of such a holder;

(xvi) Notices relating to Environmental Laws: promptly, upon receipt by Company or any of its Subsidiaries, notice that Company or such Subsidiary has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law;

(xvii) Budget: on the third Friday following the Petition Date (and each fourth Friday subsequently occurring thereafter), an updated Budget commencing with the fifth week in the previously delivered Budget; at the time such updated Budget is in form and substance acceptable to the Administrative Agent and the Requisite Lenders (as confirmed in writing), such Budget shall constitute a Supplemental Approved Budget and shall be effective as of the fifth week of the previously delivered Budget; provided, however, that if any updated Budget delivered pursuant to this subsection 6.1(xvii) is not approved by the Administrative Agent and the Requisite Lenders, the last Budget approved by the Administrative Agent and the Requisite Lenders shall remain in effect until a Supplemental Approved Budget is approved by the Administrative Agent and the Requisite Lenders;

(xviii) Variance Report: no later than the Thursday of each Week following the Petition Date (commencing on June 22, 2017), a Variance Report;

(xix) Bankruptcy Court Filings: as soon as practicable in advance of filing with the Bankruptcy Court, (a) all proposed orders and pleadings related to this Agreement, which orders and pleadings shall be in form and substance satisfactory to the Administrative Agent, (b) any plan of reorganization, and/or any disclosure statement related to such plan, (c) any motion and proposed form of order seeking to extend or otherwise modify Company's exclusive periods set forth in Section 1121 of the Bankruptcy Code, (d) any motion seeking approval of any sale of Company's assets in form and substance reasonably acceptable to the Administrative Agent and any proposed form of a bidding procedures order and

sale order (each of which must be in form and substance satisfactory to the Administrative Agent), (e) any motion and proposed form of order filed with the Bankruptcy Court relating to any management equity plan, incentive plan or severance plan, the assumption, rejection, modification or amendment of any employment agreement, or the assumption, rejection, modification or amendment of any material contract (each of which must be in form and substance satisfactory to the Administrative Agent), and (f) to the extent commercially practicable, any other material motion, document, or filing, seeking relief from the Bankruptcy Court, or otherwise requesting that the Bankruptcy Court act or refrain from acting (each of which must be in form and substance reasonably satisfactory to the Administrative Agent);

(xx) Other Information: with reasonable promptness, such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any of the Lenders; and

(xxi) Adjusted Available Amount Reports: from time to time and on the last Business Day of each calendar month, an Adjusted Available Amount Report which shall set forth (x) the information required thereunder in respect of all outstanding letters of credit cash collateralized with the proceeds of Loans funded under Section 2.1A(i) and (y) the Adjusted Available Amount.

6.2 Existence, etc.

Except as permitted under subsection 7.7, Company will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence in the jurisdiction of organization specified on Schedule 5.1 and all rights and franchises material to its business; provided, however that neither Company nor any of its Subsidiaries shall be required to preserve any such right or franchise if the Governing Body of Company or such Subsidiary shall reasonably determine that the preservation thereof is no longer desirable in the conduct of the business of Company or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to Company, such Subsidiary or Lenders.

6.3 Payment of Taxes and Claims; Tax.

A. Payment of Taxes. Except where failure to do so could not reasonably be expected to have a Material Adverse Effect, Holdings and Company will, and will cause each of their Subsidiaries to, pay all Taxes, assessments and other governmental charges imposed upon them before any penalty accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by Applicable Law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, provided that in the case of a Tax, assessment, charge or claim that has or may become a Lien against any of the Collateral or for which a penalty or fine may be due, Company shall either pay the same, or shall be contesting the same in good faith by appropriate proceedings promptly instituted and diligently conducted, and in that regard shall have established such reserve or other appropriate provision, if any, as

shall be required in conformity with GAAP and such proceedings shall be operating to stay the sale of any portion of the Collateral to satisfy such charge or claim.

B. Consolidated Returns. Company will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person other than Holdings, and then only if no Person (other than Holdings, Company and Company's Subsidiaries) is included in such consolidated tax return.

6.4 Maintenance of Properties; Insurance; Application of Net Insurance/Condemnation Proceeds.

A. Maintenance of Properties. Except as permitted by subsection 7.7, Company will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Company and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except to the extent any failure could not reasonably be expected to result in a Material Adverse Effect.

B. Insurance. Company will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for corporations similarly situated in the industry. Without limiting the generality of the foregoing, Company will maintain or cause to be maintained (i) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (ii) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times satisfactory to Administrative Agent in its commercially reasonable judgment. Each such policy of insurance shall (a) name Administrative Agent for the benefit of Lenders as an additional insured thereunder as its interests may appear and (b) in the case of each business interruption and casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to Administrative Agent, that names Administrative Agent for the benefit of Lenders as the loss payee thereunder for any covered loss in excess of \$5,000,000 and, to the extent commercially available, provides for at least 30 days prior written notice to Administrative Agent of any modification or cancellation of such policy.

C. Application of Net Insurance/Condemnation Proceeds.

(i) **Business Interruption Insurance.** Upon receipt by Company or any of its Subsidiaries of any business interruption insurance proceeds constituting Net Insurance/Condemnation Proceeds, Company shall apply an amount equal to

such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Commitment Amount shall be reduced) as provided in subsections 2.4B and 2.4D; provided, however, that so long as no Event of Default shall have occurred and be continuing, Company shall or such Subsidiary may retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes in accordance with the Budget, or to the extent not so applied within one hundred twenty (120) days of receipt, to prepay the Loans as provided in subsections 2.4B and 2.4D, and if an Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans as provided in subsections 2.4 B and 2.4D.

(ii) Net Insurance/Condemnation Proceeds Received by Company. Except with respect to those proceeds identified on Schedule 6.4C, upon receipt by Company or any of its Subsidiaries of any Net Insurance/Condemnation Proceeds other than from business interruption insurance, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Commitments shall be reduced) as provided in subsection 2.4B; provided, however, that so long as no Event of Default shall have occurred and be continuing, and if the amount of such Net Insurance/Condemnation Proceeds from any single covered loss or taking (whether received in one payment, or multiple payments) is equal to or less than \$200,000 in the aggregate, Company shall, or shall cause one or more of its Subsidiaries to, promptly and diligently apply such Net Insurance/Condemnation Proceeds to pay or reimburse the costs of repairing, restoring or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received, or to the extent not so applied within one hundred twenty (120) days of receipt, to prepay the Loans as provided in subsection 2.4B, and if an Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans as provided in subsection 2.4B.

(iii) Net Insurance/Condemnation Proceeds Received by Administrative Agent. Upon receipt by Administrative Agent of any Net Insurance/Condemnation Proceeds as loss payee, Administrative Agent shall, and Company hereby authorizes Administrative Agent to, apply such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Commitments shall be reduced) as provided in subsection 2.4B; provided, however, that so long as no Event of Default shall have occurred and be continuing, and if the amount of such Net Insurance/Condemnation Proceeds from any single covered loss or taking (whether received in one payment, or multiple payments) is equal to or less than \$200,000 in the aggregate, the Administrative Agent shall deliver such Net Insurance/Condemnation Proceeds to Company and Company shall, or shall cause one or more of its Subsidiaries to, as applicable, (x) promptly and diligently apply such Net Insurance/Condemnation Proceeds to pay or reimburse the costs of repairing, restoring or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received, or (y) retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes, and to the extent

any Net Insurance/Condemnation Proceeds subject to this subsection 6.4C(iii) are not applied in accordance with subsection 6.4C(iii)(x) or 6.4C(iii)(y) within one hundred twenty days (120) of receipt, to prepay the Loans as provided in subsection 2.4B, and if an Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans as provided in subsection 2.4B.

6.5 Inspection Rights; Lender Meeting.

A. Inspection Rights. Company shall, and shall cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent to visit and inspect any of the properties of Company or of any of its Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that Company may, if it so chooses, be present at or participate in any such discussion), and conduct financial audits, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested. Company shall, and shall cause each of its Subsidiaries to, permit such visits and inspections, extractions, discussions and audits, and shall further permit Administrative Agent to conduct such other environmental or property inspections and audits as Administrative Agent deems appropriate, at the expense of Company. Administrative Agent shall not unreasonably deny any request by a Lender that Administrative Agent exercise its rights under this subsection 6.5. Any inspection by Administrative Agent shall not interfere with the business and operations of Company. Company shall have the right to have a representative present at any inspection by Administrative Agent.

B. Lender Calls. Company, Holdings and their respective officers (including, the chief financial officer of Company) and advisors (including any investment banker or financial advisor retained by any Loan Party) shall make themselves available upon reasonable prior notice and at reasonable times to be mutually agreed for conference calls to be held on a monthly basis with the Administrative Agent and the Lenders or their representatives or advisors to discuss the Budget (and all Variance Reports related thereto), the marketing and sales process in the Chapter 11 Case or any other issues as may be reasonably requested by the Administrative Agent and any Lender, and such conference calls may be held without the participation of the Loan Parties or any other representative or advisor of the Loan Parties.

C. Administrative Agent Calls. Company, Holdings and their respective officers (including, the chief financial officer of Company) and advisors (including any investment banker or financial advisor retained by any Loan Party) shall make themselves available upon reasonable prior notice and at reasonable times to be mutually agreed for conference calls to be held as frequently as requested (but in no event more often than on a weekly basis) with the Administrative Agent and/or its representatives or advisors to discuss the Budget (and all Variance Reports related thereto), the marketing and sales process in the Chapter 11 Case, or any other issues as may be reasonably requested by the Administrative Agent, and such conference calls may be held without the participation of the Loan Parties or any other representative or advisor of the Loan Parties.

6.6 Compliance with Laws, etc.

Company shall comply, and shall cause each of its Subsidiaries to comply, with the requirements of all Applicable Laws (including all applicable Environmental Laws), except where a failure to comply could not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

6.7 Environmental Matters.

A. Environmental Disclosure. Company will deliver to Administrative Agent and Lenders:

(i) Environmental Audits and Reports. As soon as practicable following receipt by Company or any of its Subsidiaries thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, Government Authorities or any other Persons, with respect to significant environmental matters at any Facility that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or with respect to any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(ii) Notice of Certain Releases, Remedial Actions, etc. Promptly upon the discovery thereof, written notice describing in reasonable detail (a) any Release, the existence of which Release could reasonably be expected to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, and (b) any remedial action taken by or on behalf of Company or any Government Authority that is required by any applicable Environmental Law in reference to a Release described in 6.7A(ii)(a) above or is taken in response to (1) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(iii) Written Communications Regarding Environmental Claims, Releases, etc. As soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications to or from any Government Authority or unaffiliated third-party with respect to (a) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (b) any Release required to be reported to any Government Authority or unaffiliated third-party that individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (c) any request for information from any Government Authority that indicates that it is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity or violation of Environmental Laws that, in either case,

individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(iv) Notice of Certain Proposed Actions Having Environmental Impact. Prompt written notice describing in reasonable detail (a) any proposed acquisition of stock, assets, or property by Company or any of its Subsidiaries that could reasonably be expected to (1) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect or (2) affect the ability of Company or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations, and (b) any proposed action to be taken by Company or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Company or any of its Subsidiaries to any additional obligations or requirements under any Environmental Laws that could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

B. Company's Actions Regarding Hazardous Materials Activities, Environmental Claims and Violations of Environmental Laws.

(i) Remedial Actions Relating to Hazardous Materials Activities. In any case where individually or in the aggregate failure to do so could reasonably be expected to result in a Material Adverse Effect, Company shall, in compliance with all applicable Environmental Laws and Governmental Authorizations, promptly undertake, or cause to be undertaken, and shall cause each of its Subsidiaries promptly to undertake or cause to be undertaken, any and all investigations, studies, sampling, testing, abatement, cleanup, removal, remediation or other response actions required under any applicable Environmental Law as necessary to remove, remediate, clean up or abate any Hazardous Materials or Hazardous Materials Activity on, under or about any Facility or which originated from any Facility that is in violation of any applicable Environmental Laws or Governmental Authorizations, and for which Company and/or any of its Subsidiaries is responsible under any applicable Environmental Law, or that presents a risk of giving rise to an Environmental Claim against Company or any of its Subsidiaries.

(ii) Actions with Respect to Environmental Claims and Violations of Environmental Laws. Company shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws or Governmental Authorizations by Company or its Subsidiaries that could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect and (ii) make an appropriate defense, including timely response to requests for information from any Government Authority or any written notice of potential liability, to any Environmental Claim against Company or any of its Subsidiaries and appropriately discharge any obligations it may have to any Person thereunder in

any case where individually or in the aggregate failure to do so could reasonably be expected to result in a Material Adverse Effect.

6.8 Execution of Subsidiary Guaranty and Personal Property Collateral Documents After the Closing Date.

A. Execution of Subsidiary Guaranty and Personal Property Collateral Documents. In the event that any Person becomes a Subsidiary of Company, Company will, in accordance with subsection 6.1(xiv) promptly notify Administrative Agent of that fact and cause such Subsidiary to execute and deliver to Administrative Agent, the Subsidiary Guaranty or a counterpart of the Subsidiary Guaranty and a counterpart of the Security Agreement and to take all such further actions and execute all such further documents and instruments (including actions, documents and instruments comparable to those described in subsection 4.1J) as may be necessary or, in the opinion of Administrative Agent, desirable to create in favor of Administrative Agent, for the benefit of Lenders, a valid and perfected First Priority Lien on all of the personal property assets of such Subsidiary described in the applicable forms of Collateral Documents. In addition, as provided in the Security Agreement, Company shall, or shall cause the Loan Party that owns the Capital Stock of such Person to, execute and deliver to Administrative Agent a supplement to the Security Agreement and to deliver to Administrative Agent all certificates (if any) representing such Capital Stock of such Person (accompanied by irrevocable undated stock powers, duly endorsed in blank).

B. Foreign Subsidiaries. Notwithstanding the provisions of subsection 6.8A, (i) no Foreign Subsidiary that is a CFC shall be required to execute and deliver the Subsidiary Guaranty or the Security Agreement, (ii) in no event shall more than 65% of the total combined voting power of all classes of Capital Stock entitled to vote of any “first tier” Foreign Subsidiaries that are CFCs be pledged pursuant to the provisions of the Security Agreement or any other Loan Document, and (iii) in no event shall any of the stock of a Domestic Subsidiary that is owned by a Foreign Subsidiary that is a CFC be pledged pursuant to the provisions of the Security Agreement or any other Loan Document.

C. Subsidiary Organizational Documents, Legal Opinions, etc. Company shall deliver to Administrative Agent, together with such Loan Documents, (i) certified copies of such Subsidiary’s Organizational Documents, together with, if such Subsidiary is a Domestic Subsidiary, a good standing certificate from the Secretary of State of the jurisdiction of its organization and, where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect, each other state in which such Person is qualified to do business and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each of such jurisdictions, each to be dated a recent date prior to their delivery to Administrative Agent, (ii) a certificate executed by the secretary or similar officer of such Subsidiary as to (a) the fact that the attached resolutions of the Governing Body of such Subsidiary approving and authorizing the execution, delivery and performance of such Loan Documents are in full force and effect and have not been modified or amended and (b) the incumbency and signatures of the officers of such Subsidiary executing such Loan Documents, and (iii) a favorable opinion of counsel to such Subsidiary, in form and substance satisfactory to Administrative Agent, acting reasonably, as to (a) the due organization and good standing of such Subsidiary, (b) the due authorization,

execution and delivery by such Subsidiary of such Loan Documents, (c) the enforceability of such Loan Documents against such Subsidiary and (d) such other matters (including matters relating to the creation and perfection of Liens in any Collateral pursuant to such Loan Documents) as Administrative Agent may reasonably request.

6.9 Matters Relating to Additional Real Property Collateral.

A. Additional Mortgages, etc. From and after the Closing Date, in the event that (i) Company or any Subsidiary Guarantor acquires any fee interest in any Material Owned Property or (ii) at the time any Person becomes a Subsidiary Guarantor, such Person owns or holds any Material Owned Property, excluding any such Material Owned Property the encumbrancing of which requires the consent of any then-existing senior lienholder (any such non-excluded Material Owned Property described in the foregoing clause (i) or (ii) being an “**Additional Mortgaged Property**”), Company or such Subsidiary Guarantor shall deliver to Administrative Agent, as soon as practicable after such Person acquires such Additional Mortgaged Property or becomes a Subsidiary Guarantor, as the case may be, a fully executed and notarized Mortgage (an “**Additional Mortgage**”), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the interest of such Loan Party in such Additional Mortgaged Property; and such opinions that would have been delivered hereunder if such Additional Mortgaged Property were an Initial Mortgaged Property, or that may be reasonably required by Administrative Agent.

B. Real Estate Appraisals. Company shall, and shall cause each of its Subsidiaries to, permit an independent real estate appraiser satisfactory to Administrative Agent, upon reasonable notice, to visit and inspect any Additional Mortgaged Property for the purpose of preparing an appraisal of such Additional Mortgaged Property satisfying the requirements of any Applicable Laws (in each case to the extent required under such laws as determined by Administrative Agent in its discretion).

6.10 Post-Closing Obligations.

Notwithstanding anything set forth herein to the contrary, execute and deliver the documents and complete the tasks set forth on Schedule 6.10, in each case within the time limits specified therein.

6.11 [Reserved].

6.12 Sale Milestones.

A. Milestones. Company covenants, represents, and warrants that:

(i) the Interim Order shall be entered by the Bankruptcy Court in the Chapter 11 Case no later than three (3) Business Days after the Petition Date;

(ii) On or before June 16, 2017, Company shall have filed with the Bankruptcy Court an application to approve the retention and employment of an investment bank, financial advisor or similar such firm to conduct a process for

the sale of all or substantially all of the Loan Parties' assets (the “**Bankruptcy Sale**”);

(iii) on or before June 23, 2017, Company shall (a) complete a Confidential Information Memorandum or other marketing materials (any and all of which documents shall in form and substance satisfactory to the Administrative Agent) for use in connection with the sale of all or substantially all of the Loan Parties' assets in the Chapter 11 Case and (b) submit to the Administrative Agent a list of potential strategic and financial buyers;

(iv) the Final Order shall be entered by the Bankruptcy Court in the Chapter 11 Cases no later than thirty (30) calendar days after the Petition Date;

(v) on or before June 30, 2017, Company shall file a bid procedures motion in the Chapter 11 Case (which motion shall be in form and substance satisfactory to the Administrative Agent and may include a provision for a stalking horse bidder), providing for certain procedures (which procedures shall have been developed in consultation with the Administrative Agent and its professionals) for the Bankruptcy Sale;

(vi) on or before July 24, 2017, the Bankruptcy Court shall have entered a bid procedures order in form and substance satisfactory to the Administrative Agent relating to the Bankruptcy Sale;

(vii) on or before September 25, 2017, the Loan parties shall have obtained at least one bid that the Loan Parties shall have determined with the consent of the Administrative Agent, constitutes a “qualified bid” from a “qualified bidder” under the applicable bid procedures;

(viii) on or before October 6, 2017, the Bankruptcy Court shall have entered an order in form and substance satisfactory to the Administrative Agent approving the Bankruptcy Sale (the “**Bankruptcy Sale Order**”); and

(ix) on or before October 13, 2017, the transaction or transactions contemplated in connection with the Bankruptcy Sale and Bankruptcy Sale Order shall have been consummated and Company and Loan Parties, as applicable, shall irrevocably and unconditionally (without any right of claw back, setoff, recoupment, netting, or other reduction) pay an amount equal to any and all amounts outstanding or otherwise due and owing under any Loan Document and the Final Order (including fees and expenses thereunder) to the Administrative Agent in full and final satisfaction of any and all outstanding amounts under the Loan Documents and the Final Order.

B. Additional Provisions.

(i) Company shall use best efforts to provide the Administrative Agent with copies, for prompt distribution to all Lenders, of any motions, orders or agreements relating to any planned or unplanned Disposition of a Loan Party's

assets at least three (3) Business Days (or such shorter time period consented to by the Administrative Agent in its sole discretion) prior to execution thereof or filing with the Bankruptcy Court, as applicable.

(ii) No Disposition of assets referenced above shall be consummated without the prior written consent of the Administrative Agent and, to the extent the fair market value (determined by reference to the most recent appraisal available to the Administrative Agent or, if no such appraisal is available, as reasonably determined by the Administrative Agent) of the asset(s) to be disposed of in any transaction or series of related transactions exceeds \$1,000,000, the Requisite Lenders.

(iii) Other than as set forth in this Agreement, the Interim Order (and, when applicable, the Final Order), the provisions of this subsection 6.12, including, without limitation the sale milestones, will apply to processes under section 363 of the Bankruptcy Code, a plan of reorganization or otherwise, and Company and each other Loan Party that is a debtor in the Chapter 11 Case will not seek to amend, modify or waive the milestones in connection with the filing of any plan of reorganization or disclosure statement in the Chapter 11 Case without the consent of the Administrative Agent and the Requisite Lenders.

6.13 Appraisals; Enterprise Valuations.

Company shall use commercially reasonable efforts to deliver to the Administrative Agent, at the expense of Company, an appraisal with respect to the assets of the Company and its Subsidiaries within thirty (30) days after the Closing Date (and in any event, promptly upon its receipt thereof). If Company fails to deliver an appraisal with respect to the assets of Company and its Subsidiaries within thirty (30) days after the Closing Date, the Administrative Agent shall be entitled to obtain, from time to time, at the expense of Company, one or more appraisals with respect to any assets of, and/or enterprise valuation with respect to all or any portion of the business of, Company and its Subsidiaries. Company shall reasonably cooperate with, provide the information reasonably requested in connection with, and pay the reasonable and documented fees and expenses of, such appraisals and valuations and provide any information reasonably requested by the Administrative Agent and/or its appraisers, investment bankers, or other professionals in connection therewith.

6.14 Opposition to Certain Motions.

Each Loan Party shall promptly and diligently oppose all motions filed by Persons in the Bankruptcy Court to lift the stay with respect to any Collateral (other than motions filed by the Administrative Agent or the Lenders relating to this Agreement), all motions filed by Persons (other than the Administrative Agent and the Lenders) in the Bankruptcy Court to terminate the exclusive ability of Company to file a plan of reorganization, and all other motions filed by Persons in the Bankruptcy Court that, if granted, could reasonably be expected to have a Material Adverse Effect, unless, in any such case, the Administrative Agent and the Requisite Lenders provide prior written consent to such relief.

Section 7. COMPANY'S NEGATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations (other than Unasserted Obligations), unless the Administrative Agent and Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 7.

7.1 Indebtedness.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) Company may become and remain liable with respect to the Obligations;

(ii) Company and its Subsidiaries may become and remain liable with respect to Contingent Obligations permitted by subsection 7.4 and, upon any matured obligations actually arising pursuant thereto, the corresponding Indebtedness;

(iii) Company and the Subsidiary Guarantors may become and remain liable with respect to Indebtedness in respect of Capital Leases in connection with the making or incurrence of any Consolidated Capital Expenditures permitted under subsection 7.8 in an aggregate principal amount no greater than \$400,000;

(iv) Company may become and remain liable with respect to Indebtedness to any Guarantor, and any other Guarantor may become and remain liable with respect to Indebtedness to Company or any Guarantor; provided that (a) a security interest in all such intercompany Indebtedness shall have been granted to Administrative Agent for the benefit of Lenders and (b) if such intercompany Indebtedness is evidenced by a promissory note or other instrument, such promissory note or instrument shall have been pledged to Administrative Agent pursuant to the Security Agreement;

(v) Company and its Subsidiaries, as applicable, may remain liable with respect to existing Indebtedness described in Schedule 7.1 annexed hereto;

(vi) Foreign Subsidiaries and Subsidiaries that are not Loan Parties may become and remain liable with respect to Indebtedness to other Foreign Subsidiaries and Subsidiaries that are not Loan Parties;

(vii) Company and its Subsidiaries may become and remain liable with respect to Indebtedness consisting of the financing of insurance premiums in the ordinary course of business; and

(viii) Company and its Subsidiaries may become and remain liable with respect to cash management obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, employee credit card, debit card or purchase card programs and similar arrangements in each case in connection with cash management and deposit accounts and in the ordinary course of business.

7.2 Liens and Related Matters.

A. Prohibition on Liens. Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except:

- (i) Permitted Encumbrances;
- (ii) Liens created to secure Capital Leases permitted by subsection 7.1(iii) on the property subject to such lease;
- (iii) Liens existing on the Closing Date and described in Schedule 7.2 annexed hereto;
- (iv) Liens after the Closing Date arising from the cash collateralization of all or any portion of any letter of credit in an aggregate amount not to exceed \$2,000,000 at any time outstanding.

Notwithstanding the foregoing, Company and its Domestic Subsidiaries shall not enter into, or suffer to exist, any control agreements (as such term is defined in the UCC).

B. No Further Negative Pledges. Neither Company nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any Liens or Capital Lease obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) the Subordinated Note Documents, (d) customary provisions in leases, licenses and other contracts restricting the assignment thereof, and (e) any prohibition that (i) exists pursuant to the requirements of Applicable Law, (ii) consists of customary restrictions and conditions contained in any agreement relating to any transaction permitted under subsection 7.7, (iii) restricts subletting or assignment of leasehold interests contained in any lease governing a leasehold interest of Company or its Subsidiaries, (iv) exists in any agreement in effect at the time such Subsidiary becomes a Subsidiary of Company, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary, or (v) is imposed by any renewal, extension, refinancing, refund or

replacement (or successive extensions, renewals, refinancings, refunds or replacements) that are otherwise permitted by the Loan Documents or the contracts, instruments or obligations referred to in clause (b), (c), (d) or (e)(iv) above; provided that such renewals, extensions, refinancings, refunds or replacements (or successive extensions, renewals, refinancings, refunds or replacements), taken as a whole, are not more materially restrictive with respect to such prohibitions than those contained in the original agreement, as determined in good faith by the board of directors of Company.

C. No Restrictions on Subsidiary Distributions to Company or Other Subsidiaries. Company will not, and will not permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction of any kind on the ability of any such Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (ii) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (iii) make loans or advances to Company or any other Subsidiary of Company, or (iv) transfer any of its property or assets to Company or any other Subsidiary of Company, except in each case, encumbrances or restrictions (a) imposed by this Agreement and the other Loan Documents, (b) contained in an agreement with respect to a disposition permitted hereby, (c) imposed by the Subordinated Note Documents, (d) contained in any agreements governing any purchase money Liens in existence on the Closing Date and Capital Lease obligations otherwise permitted hereby (in which case, any encumbrance or restriction shall only be effective against the assets financed thereby), (e) constituting customary restrictions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture, (f) contained in any agreement of a Foreign Subsidiary or a Subsidiary that is not a Loan Party governing Indebtedness permitted to be incurred or permitted to exist under subsection 7.1 or (g) contained in, or existing by reasons of, any agreement or instrument (i) existing on the Closing Date, (ii) relating to property existing at the time of the acquisition thereof, so long as the encumbrance or restriction relates only to the property so acquired, (iii) relating to any Indebtedness of, or otherwise to, any Subsidiary at the time such Subsidiary was merged or consolidated with or into, or acquired by, Company or a Subsidiary or became a Subsidiary and not created in contemplation thereof, (iv) effecting a renewal, extension, refinancing, refund or replacement (or successive extensions, renewals, refinancings, refunds or replacements) of Indebtedness issued under an agreement referred to in clauses (i) through (iii) above, so long as the encumbrances and restrictions contained in any such renewal, extension, refinancing, refund or replacement agreement, taken as a whole, are not materially more restrictive than the encumbrances and restrictions contained in the original agreement, as determined in good faith by the board of directors of Company, (v) constituting customary provisions restricting subletting or assignment of any leases of Company or any Subsidiary or provisions in agreements that restrict the assignment of such agreement or any rights thereunder, (vi) constituting restrictions on the sale or other disposition of any property securing Indebtedness as a result of a Lien on such property permitted hereunder, (vii) restrictions on net worth or on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (viii) constituting provisions contained in agreements or instruments relating to Indebtedness permitted hereunder that prohibit the transfer of all or substantially all of the assets of the obligor under that agreement or instrument unless the transferee assumes the obligations of the obligor under such agreement or instrument, or (ix) constituting any encumbrance or

restriction with respect to property under a lease or other agreement that has been entered into for the employment or use of such property.

7.3 Investments; Acquisitions.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, or acquire, by purchase or otherwise, all or substantially all the business, property or fixed assets of, or Capital Stock of any Person, or any division or line of business of any Person except:

(i) Company and its Subsidiaries may make and own Investments in Cash and Cash Equivalents;

(ii) Company and the Subsidiary Guarantors may make and own additional equity Investments in Subsidiary Guarantors;

(iii) Company and its Subsidiaries may create, become and remain liable in respect of Contingent Obligations permitted by subsection 7.4;

(iv) Foreign Subsidiaries and Subsidiaries that are not Loan Parties may make and own Investments in other Foreign Subsidiaries and Subsidiaries that are not Loan Parties;

(v) Company and its Subsidiaries may make Consolidated Capital Expenditures permitted by subsection 7.8 and Excluded Capital Expenditures;

(vi) Company and its Subsidiaries may continue to own the Investments owned by them on the Closing Date and described in Schedule 7.3 annexed hereto;

(vii) Company and its Subsidiaries may make Investments consisting of Indebtedness permitted pursuant to subsection 7.1(iv);

(viii) Company and its Subsidiaries may make Investments consisting of Contingent Obligations permitted by subsection 7.4; and

(ix) Company and its Subsidiaries may acquire Securities in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to Company or any of its Subsidiaries or as security for any such Indebtedness or claim.

7.4 Contingent Obligations.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or become or remain liable with respect to any Contingent Obligation, except:

(i) Company may become and remain liable with respect to Contingent Obligations in respect of letters of credit issued after the Closing Date in an aggregate amount not to exceed at any time \$2,000,000;

(ii) Company and its Subsidiaries, as applicable, may remain liable with respect to Contingent Obligations existing on the Closing Date and described in Schedule 7.4 annexed hereto;

(iii) Subsidiary Guarantors may become and remain liable with respect to Contingent Obligations in respect of the Subsidiary Guaranty;

(iv) Company and its Subsidiaries may become and remain liable with respect to Contingent Obligations in respect of any obligation of Company or any Subsidiary Guarantor not prohibited by this Agreement; and

(v) Company and its Subsidiaries may make Investments permitted by subsection 7.3.

7.5 Restricted Junior Payments.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment other than in accordance with the Budget.

7.6 [Reserved].

7.7 Restriction on Fundamental Changes; Asset Sales.

Company shall not alter its corporate or legal structure, and Company shall not and shall not permit any of its Subsidiaries to merge or consolidate, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise Dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables and Capital Stock of a Subsidiary, whether newly issued or outstanding), whether now owned or hereafter acquired, except

(i) Company and its Subsidiaries may sell or otherwise dispose of assets in transactions that do not constitute Asset Sales; provided, that the consideration received for such assets shall be in an amount at least equal to the fair market value thereof;

(ii) Company and its Subsidiaries may dispose of obsolete, worn out or surplus property in the ordinary course of business; and

(iii) Asset Sales to the extent that (a) Company receives the prior written consent of the Administrative Agent and the Requisite Lenders and (b) the Bankruptcy Court enters a final, non-appealable order authorizing any such action.

7.8 Consolidated Capital Expenditures.

Company shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures other than in accordance with the Budget.

7.9 Transactions with Shareholders and Affiliates.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 5% or more of any class of equity Securities of Company or Holdings or with any Affiliate of Company or of any such holder other than: (i) any transaction (x) between Company and any Subsidiary Guarantor or between any of the Subsidiary Guarantors or (y) between Company or any Subsidiary Guarantor and any other Subsidiary that is implemented in accordance with Company's transfer pricing studies as applicable from time to time, in each case, in accordance with the Budget; and (ii) reasonable and customary fees, compensation, benefits and incentive arrangements paid or provided to, and indemnities provided on behalf of or to, officers, directors or employees of Holdings, Company or any of their respective Subsidiaries in accordance with the Budget.

7.10 Sales and Lease-Backs.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) that Company or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Company or any of its Subsidiaries) or (ii) that Company or any of its Subsidiaries intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by Company or any of its Subsidiaries to any Person (other than Company or any of its Subsidiaries) in connection with such lease, in each case, other than any sale-leaseback transaction in connection with the making or incurrence of any Consolidated Capital Expenditures permitted under subsection 7.8.

7.11 Conduct of Business.

From and after the Closing Date, Company shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Company and its Subsidiaries on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

7.12 Fiscal Year.

Company shall not change its Fiscal Year-end from December 31.

7.13 Transaction Bonus and Incentive Arrangements.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any payments under or in respect of the Transaction Bonus Plan (as defined in

the resolutions adopted by the Board of Directors of CST Industries Holdings, Inc. in May 2016), as such plan may be amended, supplemented, modified or replaced from time to time, or any subsequently adopted or other similar plan providing for management bonuses or incentive arrangements.

7.14 Bankruptcy Provisions. No Loan Party shall: (a) seek or consummate a sale of assets under a plan of reorganization, Section 363(b) of the Bankruptcy Code or otherwise without the prior written consent of the Administrative Agent and the Requisite Lenders; (b) except for the Carve-Out (subject to the applicable caps and the other limitations set forth herein and in the Final Order), incur administrative expense claims pari passu with or senior to the Obligations; (c) seek or consent to any modification, stay, vacation or amendment with respect to (i) “first day orders” entered by the Bankruptcy Court, (ii) the Final Order or (iii) the Loan Documents, except in each case as agreed to by the Administrative Agent and the Requisite Lenders in their sole discretion; (d) except as otherwise expressly permitted herein or in the Interim Order or Final Order, create any Lien that ranks senior to, or pari passu with, the Liens securing the Obligations; (e) make cash expenditures on account of claims incurred (i) by critical vendors prior to the Petition Date, or (ii) pursuant to Section 503(b)(9) of the Bankruptcy Code, or pursuant to any “first day” orders entered by the Bankruptcy Court, in each case except as agreed to by the Administrative Agent and the Requisite Lenders or as permitted by the Budget (including Permitted Variances thereto), (f) seek or consent to any order seeking authority to take any action prohibited by the Final Order or the other Loan Documents without the prior written consent of the Administrative Agent and the Requisite Lenders or otherwise required by any Applicable Law or (g) except as expressly consented to by the Administrative Agent and the Requisite Lenders, seek, or consent to any order seeking, to settle any litigation related to employee or labor matters, including without limitation, wage and hour collective or class action litigation involving one or more Loan Parties.

7.15 Chapter 11 Claims. No Loan Party shall incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claims of the Administrative Agent or Lenders against any Loan Party.

Section 8. EVENTS OF DEFAULT

If any of the following conditions or events (“**Events of Default**”) shall occur:

8.1 Failure to Make Payments When Due.

Failure by Company to pay any installment of principal of any Loan when due, whether at, stated maturity, by acceleration, by notice of voluntary prepayment (unless such notice has been conditioned or rescinded as provided hereby), by mandatory prepayment or otherwise; or failure by Company to pay any interest on any Loan or any fee or any other amount due under this Agreement within five days after the date due; or

8.2 Default in Other Agreements.

(i) Failure of Company or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more

items of Indebtedness (other than Indebtedness referred to in subsection 8.1) or Contingent Obligations in an individual principal amount of \$3,500,000 or more or with an aggregate principal amount of \$5,000,000 or more, in each case beyond the end of any grace period provided therefor; or

(ii) breach or default, in each case beyond any grace period provided therefor, by Company or any of its Subsidiaries with respect to any other material term of (a) one or more items of Indebtedness or Contingent Obligations in the individual or aggregate principal amounts referred to in clause (i) above or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness or Contingent Obligation(s), if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness or Contingent Obligation(s) (or a trustee on behalf of such holder or holders) to cause, that Indebtedness or Contingent Obligation(s) to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

8.3 Breach of Certain Covenants.

Failure of Company to perform or comply with any term or condition contained in subsection 2.5, 6.2 or Section 7 of this Agreement; or

8.4 Breach of Warranty.

Any representation, warranty, certification or other statement made by Company or any of its Subsidiaries in any Loan Document or in any statement or certificate at any time given by Company or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made, provided that, if such false representation, warranty, certification or statement is capable of being corrected, and the applicable Loan Party causes such representation, warranty, certification or statement to be corrected by no later than seven (7) days after it is made or deemed made, the falseness of such representation, warranty certification or statement shall not constitute an Event of Default.

8.5 Other Defaults Under Loan Documents

Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in subsections 8.1 and 8.3, and such default shall not have been remedied or waived within seven (7) Business Days after the earlier of (i) an Officer of Company or such Loan Party becoming aware of such default or (ii) receipt by Company and such Loan Party of notice from Administrative Agent or any Lender of such default; or

8.6 [Reserved].

8.7 [Reserved].

8.8 Judgments and Attachments.

Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$3,500,000 or (ii) in the aggregate at any time an amount in excess of \$5,000,000, in either case not covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage in writing, shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

8.9 [Reserved].

8.10 Employee Benefit Plans.

There shall occur one or more ERISA Events or similar events in respect of any Foreign Plans, that individually or in the aggregate has resulted in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$3,500,000 during the term of this Agreement; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA) and unfunded liabilities in respect of Foreign Plans, individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which could reasonably be expected to have a Material Adverse Effect; or

8.11 [Reserved].

8.12 Invalidity of Loan Documents; Failure of Security; Repudiation of Obligations.

At any time after the execution and delivery thereof, (a) any Loan Document or any provision thereof, for any reason other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (b) Administrative Agent shall not have or shall cease to have a valid and perfected First Priority Lien in any Collateral purported to be covered by the Collateral Documents, or (c) any Loan Party shall contest the validity or enforceability of any Loan Document or any provision thereof in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document or any provision thereof to which it is a party; or

8.13 Conduct of Business By Holdings.

Holdings shall (i) own any assets other than (a) Investments in Company and through Company, Subsidiaries of Company and (b) Cash and Cash Equivalents or (ii) create any consensual Lien on Company's Capital Stock other than the Lien under the Holdings Pledge Agreement and the Lien securing the Pre-Petition Senior Loan Obligations pursuant to the "Holdings Pledge Agreement" (as defined in the Pre-Petition Senior Credit Agreement);

8.14 Bankruptcy Matters.

The Bankruptcy Court shall enter an order authorizing, approving or granting (or Company shall file a motion seeking such authorization, approval or grant of) (i) post-Petition

Date financing under section 364 of the Bankruptcy Code or on any other basis that is not permitted by, or otherwise provided for under, this Agreement or the Interim Order or Final Order (as applicable), (ii) any Liens on the Collateral not otherwise permitted herein, (iii) dismissal of the Chapter 11 Case or conversion of any Chapter 11 Case to one under Chapter 7 of the Bankruptcy Code, (iv) appointment of a Chapter 11 trustee in any Chapter 11 Case, (v) any other superpriority claim senior to or *pari passu* with the superpriority claims of the Administrative Agent or the Lenders, (vi) modification of this Agreement (other than pursuant to subsection 10.6) or the Final Order, (vii) any action materially adverse to the Administrative Agent or the Lenders, or their rights and remedies with respect to or interest in the Collateral, (viii) appointment of an examiner having powers beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code in any Chapter 11 Case, (ix) relief from the automatic stay for the benefit of any creditor with a security interest in the Collateral without the consent of the Administrative Agent and the Requisite Lenders, or (x) termination of the use of cash collateral by the Loan Parties; or

8.15 Prepetition Debts.

Company shall make any pre-petition payment or otherwise pay any claim that accrued prior to the Petition Date without the prior written consent of the Administrative Agent and the Requisite Lenders in their sole discretion or other than as permitted by the Budget (and any Permitted Variances thereto); or

8.16 Actions Against Administrative Agent.

Company shall commence any action against the Administrative Agent or any Lender, on behalf of itself or any of its affiliates, officers or employees; or

8.17 Material Adverse Effect.

Any Material Adverse Effect has occurred following the Closing Date, other than the filing of the Chapter 11 Case or as described on Schedule 5.4; or

8.18 Sale Milestones.

The failure of Company to comply with any of the milestones set forth in subsection 6.12, regardless of whether Company used commercially reasonable efforts to comply with any such milestone, and such failure shall not have been remedied or waived within five (5) Business Days after such failure; or

8.19 Budget.

Any Variance shall occur, other than a Permitted Variance; or

8.20 506(c) Claims.

A claim under Section 506(c) of the Bankruptcy Code or otherwise shall have been allowed against any of all of the Administrative Agent, any Lender, or the collateral securing any Pre-Petition Senior Loan Obligations; or

8.21 Competing Plans.

The filing by any Loan Party of any plan of reorganization or related disclosure statement or any direct or indirect amendment, modification, waiver or other change to the Chapter 11 Plan or related disclosure statement, or the entry of an order confirming any such plan of reorganization or approving any such disclosure statement or approving any such amendment, modification, waiver or other change in each case to the extent that such filing is not the Chapter 11 Plan or treats the claims of the Administrative Agent or any of the Lenders in any manner to which they do not consent in their respective sole discretion; or

8.22 Exclusivity.

The Bankruptcy Court shall enter an order that results in any termination or modification of the exclusivity periods set forth in Section 1121 of the Bankruptcy Code or any such exclusivity periods shall have expired; or

8.23 Bankruptcy Orders Not in Full Force and Effect.

The Interim Order (prior to entry of the Final Order) or the Final Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment, without the prior written consent of the Administrative Agent and the Requisite Lenders; or

8.24 Compliance with Interim and Final Orders.

The failure of any Loan Party to comply in any material respect with the Interim Order (prior to entry of the Final Order) or the Final Order; or

8.25 Asset Sales.

Any sale or other Disposition of all or a material portion of the Collateral pursuant to sections 363 or 1129 of the Bankruptcy Code other than as permitted by the Interim Order or Final Order (or pursuant to a transaction expressly permitted herein), or the filing by any Loan Party of any motion to sell all or a substantial part of the Collateral on terms that are not acceptable to the Requisite Lenders, in their sole discretion; or

8.26 Administrative Expense or Priority Claims.

A claim against Company arising prior to the Effective Date (as defined in the Chapter 11 Plan) of a kind specified under or entitled to priority pursuant to sections 364(c)(1), 503(b), 507(a), 507(b) or 1114(e)(2) of the Bankruptcy Code or otherwise shall have been allowed in excess of \$125,000 against Company as a result of litigation with employees or former employees of Company (including, without limitation, wage and hour collective or class action litigation involving Company); or

8.27 Challenge Under Final Order.

If sixty (60) days after a Committee or a party in interest obtains standing to assert a Challenge (as defined in the Interim Order) any such Challenge (as defined in the Interim Order) is not rejected via a final, nonappealable order; or

8.28 Alteration of Interim Order or Final Order.

Entry of an order to (i) revoke, reverse, stay, modify, supplement or amend the Interim Order or the Final Order other than modifications, amendments and supplements that are approved in writing by the Administrative Agent and the Requisite Lenders in their sole discretions, (ii) permit any administrative expense or claim to have administrative priority as to the Loan Party equal or superior to the priority of the Administrative Agent or Lenders in respect of the Loan Documents, other than claims secured by Permitted Encumbrances, the Carve-Out and Liens permitted pursuant to subsections 7.2A(ii) and 7.2A(iv) or (iii) grant or permit the grant of the Liens on the Collateral other than as permitted by the Loan Documents, including, but not limited to, the Interim Order and the Final Order (as applicable);

THEN upon the occurrence and during the continuation of any Event of Default, Administrative Agent shall, upon the written request or with the written consent of Requisite Lenders, by written notice to Company, declare all or any portion of (a) the unpaid principal amount of and accrued interest on the Loans, and (b) any and all other Obligations, to be, and the same shall forthwith become, immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company, and the obligation of each Lender to make any Loan shall thereupon terminate.

Section 9. ADMINISTRATIVE AGENT

9.1 Appointment.

A. Appointment of Administrative Agent. BNP Paribas is hereby appointed Administrative Agent hereunder and under the other Loan Documents. Each Lender hereby authorizes Administrative Agent to act as its agent in accordance with the terms of this Agreement and the other Loan Documents. BNP Paribas agrees to act upon the express conditions contained in this Agreement and the other Loan Documents, as applicable. Except for subsections 9.1B, 9.5 and 9.6, the provisions of this Section 9 are solely for the benefit of Administrative Agent and Lenders and no Loan Party shall have rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties under this Agreement, Administrative Agent (other than as provided in subsection 2.1D) shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any other Loan Party.

Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact appointed by Administrative Agent in its sole discretion. Administrative Agent and any such sub-agent may perform any and all of the duties of Administrative Agent and exercise the rights and powers of Administrative Agent by or through their respective Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates

(“**Related Parties**”). The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent.

B. Appointment of Supplemental Collateral Agents. It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case Administrative Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, it may be necessary that Administrative Agent appoint an additional individual or institution as a separate trustee, co-trustee, collateral agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Collateral Agent**” and collectively as “**Supplemental Collateral Agents**”).

In the event that Administrative Agent appoints a Supplemental Collateral Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to Administrative Agent or to which Administrative Agent is subject, with respect to such Collateral shall be exercisable by and vest in such Supplemental Collateral Agent to the extent, and only to the extent, necessary to enable such Supplemental Collateral Agent to exercise such rights, powers and privileges with respect to such Collateral as if such Supplemental Collateral Agent were Administrative Agent and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by and against such Supplemental Collateral Agent shall run to and be enforceable by and against either Administrative Agent or such Supplemental Collateral Agent, and (ii) the provisions of this Section 9 and of subsections 10.2 and 10.3 that refer to Administrative Agent shall inure to the benefit of such Supplemental Collateral Agent and all references therein to Administrative Agent shall be deemed to be references to Administrative Agent and/or such Supplemental Collateral Agent, as the context may require.

Should any instrument in writing from Company or any other Loan Party be required by any Supplemental Collateral Agent so appointed by Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, Company shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by Administrative Agent. In case any Supplemental Collateral Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall vest in and be exercised by Administrative Agent until the appointment of a new Supplemental Collateral Agent.

C. Control. Each Lender and Administrative Agent hereby appoint each other Lender as agent for the purpose of perfecting Administrative Agent’s security interest in assets that, in accordance with the UCC, can be perfected by possession or control.

9.2 **Powers and Duties; General Immunity.**

A. Powers; Duties Specified. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified in this Agreement and the other Loan Documents, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Administrative Agent shall not have, by reason of this Agreement or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or Company; and nothing in this Agreement or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect of this Agreement or any of the other Loan Documents except as expressly set forth herein or therein.

B. No Responsibility for Certain Matters. The Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by the Administrative Agent to Lenders or by or on behalf of Company to the Administrative Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of Company or any other Person liable for the payment of any Obligations, nor shall the Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Potential Event of Default. Anything contained in this Agreement to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

C. Exculpatory Provisions. Neither the Administrative Agent nor any of its officers, directors, employees or agents shall be liable to Lenders for any action taken or omitted by the Administrative Agent under or in connection with any of the Loan Documents except to the extent caused by the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection with this Agreement or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until the Administrative Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), the Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions; provided that the Administrative Agent shall not be required

to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law. Without prejudice to the generality of the foregoing, (i) the Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication (including any electronic message, Internet or intranet website posting or other distribution), instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors reasonably selected by it; and (ii) no Lender shall have any right of action whatsoever against an Agent as a result of the Administrative Agent acting or (where so instructed) refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6).

D. Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, the Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, the Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it hereunder, and the term “Lender” or “Lenders” or any similar term shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, acquire equity interests in and generally engage in any kind of commercial banking, investment banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

9.3 Independent Investigation by Lenders; No Responsibility For Appraisal of Creditworthiness.

Each Lender agrees that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with the making of the Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Company and its Subsidiaries. The Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and the Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

9.4 Right to Indemnity.

Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify the Administrative Agent and its officers, directors, employees, agents, attorneys, professional advisors and Affiliates to the extent that any such Person shall not have been reimbursed by

Company, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and fees and disbursements of any financial advisor engaged by the Administrative Agent) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent or such other Person in exercising the powers, rights and remedies of the Administrative Agent or performing duties of the Administrative Agent hereunder or under the other Loan Documents or otherwise in its capacity as the Administrative Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of the Administrative Agent resulting solely from the Administrative Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. If any indemnity furnished to the Administrative Agent or any other such Person for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may request additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

9.5 Resignation of Administrative Agent; Successor Administrative Agent.

A. Resignation; Successor Administrative Agent. Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. If no such successor shall have been so appointed by Requisite Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent. If Administrative Agent shall notify Lenders and Company that no Person has accepted such appointment as successor Administrative Agent, such resignation shall nonetheless become effective in accordance with Administrative Agent's notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, except that any Collateral held by Administrative Agent will continue to be held by it until a Person shall have accepted the appointment of successor Administrative Agent, and (ii) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by, to or through each Lender directly, until such time as Requisite Lenders appoint a successor Administrative Agent in accordance with this subsection 9.5A. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement (if not already discharged as set forth above). After any retiring Administrative Agent's resignation hereunder, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement.

B. [Reserved].

9.6 Collateral Documents and Guaranties.

Each Lender hereby further authorizes Administrative Agent, on behalf of and for the benefit of Lenders, to enter into each Collateral Document as secured party and to be the agent for and representative of Lenders under each Guaranty, and each Lender agrees to be bound by the terms of each Collateral Document and the Guaranties; provided that Administrative Agent shall not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any Collateral Document or the Guaranties or (ii) release any Collateral (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Collateral Document), in each case without the prior consent of Requisite Lenders (or, if required pursuant to subsection 10.6, all Lenders); provided further, however, that, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted by this Agreement or to which Requisite Lenders have otherwise consented, (b) release any Subsidiary Guarantor from the Subsidiary Guaranty if all of the Capital Stock of such Subsidiary Guarantor is sold to any Person (other than an Affiliate of Company) pursuant to a sale or other disposition permitted hereunder or to which Requisite Lenders have otherwise consented or (c) subordinate the Liens of Administrative Agent, on behalf of Lenders, to any Liens permitted by clause (ii) of subsection 7.2A; provided that, in the case of a sale of such item of Collateral or stock referred to in subdivision (a) or (b), the requirements of subsection 10.14 are satisfied. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Guaranties may be exercised solely by Administrative Agent acting as agent for and representative of Lenders in accordance with the terms thereof, and (2) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Administrative Agent at such sale.

Without derogating from any other authority granted to Administrative Agent herein or in the Collateral Documents or any other document relating thereto, each Lender hereby specifically (i) authorizes Administrative Agent to enter into pledge agreements pursuant to this subsection 9.6 with respect to the Capital Stock of all existing and future first-tier Foreign Subsidiaries, which pledge agreements may be governed by the laws of each of the jurisdictions of formation of such Foreign Subsidiaries, as agent on behalf of each of Lenders, with the effect that Lenders each become a secured party thereunder or, where relevant in a jurisdiction, as agent and trustee, with the effect that Lenders each become a beneficiary of a trust and Administrative Agent has all the rights, powers, discretions, protections and exemptions from liability set out in the pledge agreements and (ii) except in connection with any such pledge agreement for a jurisdiction in which Administrative Agent holds the Capital Stock as agent and trustee for Lenders, appoints Administrative Agent as its attorney-in-fact granting it the powers

to execute each such pledge agreement and any registrations of the security interest thereby created, in each case in its name and on its behalf, with the effect that each Lender becomes a secured party thereunder. With respect to each such pledge agreement, Administrative Agent has the power to sub-delegate to third parties its powers as attorney-in-fact of each Lender.

9.7 [Reserved].

9.8 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Holdings, Company or any of the Subsidiaries of Company, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Company) shall be entitled and empowered, by intervention in such proceeding or otherwise

(i) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and the Administrative Agent and their agents and counsel and all other amounts due Lenders and the Administrative Agent under subsections 2.3 and 10.2) allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under subsections 2.3 and 10.2.

Nothing herein contained shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10. MISCELLANEOUS

10.1 Successors and Assigns; Assignments and Participations in Loans and Letters of Credit.

A. General. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders (it being understood that Lenders' rights of assignment are subject to the further provisions of this subsection 10.1). Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by Company without the prior written consent of all Lenders (and any attempted assignment or transfer by Company without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of each of Administrative Agent and Lenders and Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement. Upon written request by any Lender, Administrative Agent shall provide such Lender with a copy of the list of entities referred to in clause (ii) of the second proviso of the definition of "Eligible Assignee".

B. Assignments.

(i) Amounts and Terms of Assignments. Any Lender may assign to one or more Eligible Assignees the entire remaining amount of the assigning Lender's rights and obligations under this Agreement; provided that, (a) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee of \$3,500 (unless the assignee is an Affiliate or an Approved Fund of the assignor, in which case no fee shall be required, and provided that only one such processing and recordation fee shall be required in connection with concurrent assignments to two or more Approved Funds of the same Lender), and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent information reasonably requested by Administrative Agent, including such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to subsection 2.7B(iv) and (b) except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund of a Lender, the Administrative Agent shall have consented thereto (which consent shall not be unreasonably withheld).

Upon such execution, delivery and consent (where required), from and after the effective date specified in such Assignment Agreement, (y) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (z) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination of this Agreement under subsection 10.9B) and be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto. The assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable,

surrender its Notes, if any, to Administrative Agent for cancellation, and thereupon new Notes shall, if so requested by the assignee and/or the assigning Lender in accordance with subsection 2.1E, be issued to the assignee and/or to the assigning Lender, substantially in the form of Exhibit IV annexed hereto, with appropriate insertions, to reflect the amounts of the new Commitments and/or outstanding Loans, of the assignee and/or the assigning Lender. Other than as provided in subsection 10.5, any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 10.1B shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection 10.1C; provided that if such participation is not permitted under subsection 10.1C then such assignment or transfer shall be null and void. Notwithstanding anything to the contrary herein or in any Assignment Agreement, in the case of an assignment to a Person meeting the criteria of clause (i) of the definition of the term “Eligible Assignee” of the assigning Lender, such assignment shall be effective between such assigning Lender and such Eligible Assignee immediately without compliance with the conditions for assignment under this subsection 10.1B, but shall not be effective with respect to any Loan Party, Administrative Agent, or any Lender, and each Loan Party, Administrative Agent, and each Lender shall be entitled to deal solely and directly with such assigning Lender under any such assignment, in each case, until the conditions for assignment under subsection 10.1B have been complied with.

(ii) Acceptance by Administrative Agent; Recordation in Register. Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with the processing and recordation fee referred to in subsection 10.1B(i) and any forms, certificates or other evidence with respect to United States federal income tax withholding matters that such assignee may be required to deliver to Administrative Agent pursuant to subsection 2.7B(iv), Administrative Agent shall, if Administrative Agent has consented to the assignment evidenced thereby (to the extent such consent is required pursuant to subsection 10.1B(i)), (a) accept such Assignment Agreement by executing a counterpart thereof as provided therein (which acceptance shall evidence any required consent of Administrative Agent to such assignment), (b) record the information contained therein in the Register, and (c) give prompt notice thereof to Company. Administrative Agent shall maintain a copy of each Assignment Agreement delivered to and accepted by it as provided in this subsection 10.1B(ii).

(iii) [Reserved].

(iv) Assignments to SPV’s. Notwithstanding anything to the contrary contained herein, any Lender (an “**Assigning Lender**”) may assign to one or more special funding vehicles (other than an entity referred to in clause (ii) of the second proviso of the definition of “**Eligible Assignee**”) identified as such in writing from time to time by the Assigning Lender to Administrative Agent and Company (an “**SPV**”) all or a portion of its funded Loans (without the

corresponding Commitment), without consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Assigning Lender and such SPV, and may grant such SPV the option, in such SPV's sole discretion, to provide Company all or any part of any Loan that such Assigning Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPV to fund any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Assigning Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that an SPV shall be entitled to the benefits of subsections 2.6D and 2.7 (subject to the requirements and limitations therein and in subsection 2.8), but (i) no SPV shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable and (ii) the Assigning Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Assigning Lender to the same extent, and as if, such Loan were made by such Assigning Lender. Notwithstanding anything to the contrary contained herein, subject to compliance with the provisions of this subsection 10.1B(iv), any SPV may disclose on a confidential basis any non-public information related to the evaluation, administration, servicing of, or the reporting on, the assets or securitization activities of such SPV or its affiliates to any trustee, administrator, collateral manager, servicer, backup servicer, lender, rating agency or secured party of any SPV.

C. Participations. Any Lender may, without the consent of Company or Administrative Agent (but subject to prior written notice to Company), sell participations to one or more Persons (other than a natural Person, entities referred to in clause (ii) of the second proviso of the definition of "Eligible Assignee" or Company or any of its Affiliates) in all or a portion of such Lender's rights and/or obligations under this Agreement; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Company, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver directly affecting (i) the extension of the regularly scheduled maturity of any portion of the principal amount of or interest on any Loan allocated to such participation (other than interest imposed by subsection 2.2E), (ii) a reduction of the principal amount of or the rate of interest payable on any Loan allocated to such participation (other than interest imposed by subsection 2.2E) or (iii) an increase in the Commitment allocated to such participation (it being understood that waivers or modifications of conditions precedent, covenants, Potential Events of Default or Events of Default, mandatory prepayments or mandatory reductions of Loans or Commitments, shall not constitute an increase in the Commitment allocated to any participation). Subject to the further provisions of this subsection

10.1C, Company agrees that each Participant shall be entitled to the benefits of subsections 2.6D and 2.7 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection 10.1B. To the extent permitted by law, each Participant also shall be entitled to the benefits of subsection 10.4 as though it were a Lender, provided such Participant agrees to be subject to subsection 10.5 as though it were a Lender. A Participant shall not be entitled to receive any greater payment under subsections 2.6D and 2.7 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant unless the sale of the participation to such Participant is made with Company's prior written consent. No Participant shall be entitled to the benefits of subsection 2.7 unless Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Company, to comply with subsection 2.7B(iv) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Company, maintain a register on which it enters the name and address of each Participant to which it has sold a participation and the principal amounts of each such Participant's interest in the Loans or other rights and obligations of such Lender under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

D. Reserved.

E. Pledges and Assignments. Any Lender may at any time pledge or assign a security interest in all or any portion of its Loans, and the other Obligations owed to such Lender, to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank or any central bank having jurisdiction over such Lender; provided that (i) no Lender shall be relieved of any of its obligations hereunder as a result of any such assignment or pledge and (ii) in no event shall any assignee or pledgee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

F. Information. Each Lender may furnish any information concerning Holdings, Company and its Subsidiaries in the possession of that Lender from time to time to assignees and participants (including prospective assignees and participants), subject to subsection 10.19; but in no event to entities referred to in clause (ii) of the second proviso of the definition of "Eligible Assignee".

G. Agreements of Lenders. Each Lender listed on the signature pages hereof hereby agrees, and each Lender that becomes a party hereto pursuant to an Assignment Agreement shall be deemed to agree, (i) that it is an Eligible Assignee described in clause (ii) of the definition thereof; (ii) that it has experience and expertise in the making of or purchasing loans such as the Loans; and (iii) that it will make or purchase Loans for its own account in the ordinary course of its business and without a view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this subsection 10.1, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control).

10.2 Expenses.

Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly after written demand therefor (together with backup documentation supporting such reimbursement request): (i) all reasonable and documented out-of-pocket costs and expenses of negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (ii) all reasonable and documented out-of-pocket costs and expenses of creating and perfecting Liens in favor of Administrative Agent on behalf of Lenders pursuant to any Collateral Document, including filing and recording fees, expenses and search fees and title insurance premiums; (iii) all reasonable and documented out-of-pocket costs and expenses (including the reasonable and documented fees and expenses, and disbursements of any auditors, accountants or appraisers and any environmental or other consultants and advisors retained by Administrative Agent after consultation with Company) of obtaining and reviewing any appraisals provided for under subsection 6.9 and any environmental audits or reports provided for under subsection 6.7A; (iv) all reasonable and documented out-of-pocket costs and expenses incurred by Administrative Agent in connection with the custody or preservation of any of the Collateral; (v) all other reasonable and documented out-of-pocket costs and expenses incurred by Administrative Agent in connection with the primary syndication of the Commitments and Loans; (vi) all costs and expenses, including reasonable attorneys' fees and fees, costs and expenses of accountants, advisors and consultants, incurred by Administrative Agent and its counsel at any time that an Event of Default has occurred and is continuing, relating to efforts to (a) evaluate or assess any Loan Party, its business or financial condition and (b) protect, evaluate, assess or dispose of any of the Collateral, and (vii) all documented out-of-pocket costs and expenses, including attorneys' fees, fees, cost and expenses of accountants, advisors and consultants and costs of settlement, incurred by Administrative Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Loan Documents) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings; provided that any legal fees and expenses to be reimbursed by Company in accordance with clauses (i) through (vii) above shall be limited to the reasonable and documented fees and disbursements of one outside counsel to Administrative Agent and Lenders taken as a whole and, if reasonably necessary, one local outside counsel to Administrative Agent and Lenders taken as a whole in each relevant material jurisdiction, and in the case of a conflict of interest, one additional counsel to the Administrative Agent and Lenders taken as a whole and, if reasonably necessary, one local outside counsel to Administrative Agent and Lenders taken as a whole in each relevant material jurisdiction.

10.3 Indemnity.

In addition to the payment of expenses pursuant to subsection 10.2, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless the Administrative Agent and Lenders, and the officers, directors, trustees, employees, agents, advisors and Affiliates of the Administrative Agent and Lenders (collectively called the "**Indemnitees**"), within 30 days after written demand therefor (together with backup

documentation supporting such reimbursement request), from and against any and all Indemnified Liabilities (as hereinafter defined); provided that Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (x) arise from the gross negligence, bad faith or willful misconduct of, or material breach of the Loan Documents by, such Indemnitee (or any of its Related Parties) as determined by a final judgment of a court of competent jurisdiction or (y) result from any dispute solely among Indemnitees (or their Related Parties) and not involving any action or inaction by Company, Sponsor or their respective Affiliates (excluding as against Administrative Agent in its capacity as such).

As used herein, “**Indemnified Liabilities**” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to comply with any applicable Environmental Law to remove, remediate, clean up or abate any Hazardous Materials or Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever and documented fees and disbursements in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity (but limited, as to legal fees and expenses, to the documented fees and disbursements of one outside counsel to the Indemnitees taken as a whole and, if reasonably necessary, one local outside counsel to the Indemnitees taken as a whole in each relevant material jurisdiction and, in the case of a conflict of interest, one additional counsel to the Indemnitees taken as a whole and one local outside counsel in each relevant jurisdiction), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby (including Lenders’ agreement to make the Loans hereunder or the use or intended use of the proceeds thereof or the issuance of Letters of Credit hereunder or the use or intended use of any thereof, of any present or future de jure or de facto Government Authority or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranties)), or (ii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries; provided, however, that Company shall not be obligated to indemnify any Indemnitees for any acts or omissions of such Indemnitee in connection with matters described in this subsection to the extent arising from the gross negligence, bad faith, willful misconduct of, or material breach of the Loan Documents by such Indemnified Party (or any of its Related Parties), as determined by a court of competent jurisdiction in a final judgment

To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is

permitted to pay and satisfy under Applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

10.4 Set-Off.

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon the occurrence and during the continuation of any Event of Default (and with the approval of the Requisite Lenders prior to any Loans becoming or being declared to be due under Section 8) each of Lenders and their Affiliates is hereby authorized by Company at any time or from time to time, without notice to Company or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by that Lender or any Affiliate of that Lender to or for the credit or the account of Company and each other Loan Party against and on account of the Obligations of Company or any other Loan Party to that Lender (or any Affiliate of that Lender) or to any other Lender (or any Affiliate of any other Lender) under this Agreement and the other Loan Documents, including all claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not (i) that Lender shall have made any demand hereunder or (ii) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 8 and although said obligations and liabilities, or any of them, may be contingent or unmatured.

10.5 Ratable Sharing.

Lenders hereby agree among themselves that if any of them shall, whether by voluntary or mandatory payment (other than a payment or prepayment of Loans made and applied in accordance with the terms of this Agreement), by realization upon security, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to that Lender hereunder or under the other Loan Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) that is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall, unless such proportionately greater payment is required by the terms of this Agreement, (i) notify Administrative Agent and each other Lender of the receipt of such payment and (ii) apply a portion of such payment to purchase assignments (which it shall be deemed to have purchased from each seller of an assignment simultaneously upon the receipt by such seller of its portion of such payment) of the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that (a) if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such assignments shall be returned to such purchasing Lender ratably to the extent of such recovery, but without

interest and (b) the foregoing provisions shall not apply to (1) any payment made by Company pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment (other than an assignment pursuant to this subsection 10.5) of or the sale of a participation in any of its Obligations to any Eligible Assignee or Participant pursuant to subsections 10.1B or 10.1C. Company expressly consents to the foregoing arrangement and agrees that any purchaser of an assignment so purchased may exercise any and all rights of a Lender as to such assignment as fully as if that Lender had complied with the provisions of subsection 10.1B with respect to such assignment. In order to further evidence such assignment (and without prejudice to the effectiveness of the assignment provisions set forth above), each purchasing Lender and each selling Lender agree to enter into an Assignment Agreement at the request of a selling Lender or a purchasing Lender, as the case may be, in form and substance reasonably satisfactory to each such Lender.

10.6 Amendments and Waivers.

No amendment, modification, termination or waiver of any provision of this Agreement or of the Notes, and no consent to any departure by Company therefrom (other than matters described in clauses (a) and (b) below), shall in any event be effective without the written concurrence of Requisite Lenders. No amendment, modification, termination, waiver or consent of any provisions of this Agreement or of the Notes shall, without the consent of:

(i) each Lender with Obligations directly affected (1) reduce the principal amount of any Loan, (2) postpone the final maturity date of any Loan or postpone the date or reduce the amount of any scheduled payment (but not prepayment) of principal of any Loan, (3) postpone the date on which any interest or any fees are payable other than interest imposed by subsection 2.2E, (4) decrease the interest rate borne by any Loan (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to subsection 2.2E) or the amount of any fees payable hereunder, or (5) extend the Commitment Termination Date;

(ii) each Lender, (1) subject to the last paragraph of this subsection 10.6, and subsection 2.11, change in any manner the definition of “Pro Rata Share” or subsection 2.4C(iii) or the definition of “Requisite Lenders”, (2) change in any manner any provision of this Agreement that, by its terms, expressly requires the approval or concurrence of all Lenders, (3) increase the maximum duration of Interest Periods permitted hereunder, (4) release any Lien granted in favor of Administrative Agent with respect to all or substantially all of the Collateral or release Holdings from its obligations under the Holdings Guaranty or release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case other than in accordance with the terms of the Loan Documents, or (5) change in any manner or waive the provisions contained in this subsection 10.6.

(iii) In addition, no amendment, modification, termination or waiver of any provision that increases the amount of a Commitment of a Lender shall be effective without the consent of such Lender (it being understood that waivers or

modifications of conditions precedent, covenants, Potential Events of Default or Events of Default, mandatory prepayments or mandatory reductions of Loans or Commitments, shall not constitute an increase in the Commitment of such Lender).

(iv) Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of that Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company in any case shall entitle Company to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this subsection 10.6 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company and each Subsidiary Guarantor.

(v) Notwithstanding the foregoing and without limiting subsection 2.1A(iv), this Agreement may be amended (or amended and restated) with the written consent of the Requisite Lenders, Administrative Agent and Company (x) to add one or more additional or replacement tranches or credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Loans and the Commitments and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such tranches or credit facilities in any determination of Pro Rata Share, subsection 2.4C(iii), and the Requisite Lenders.

10.7 Independence of Covenants.

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of an Event of Default or Potential Event of Default if such action is taken or condition exists.

10.8 Notices; Effectiveness of Signatures.

Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent by telefacsimile, electronic mail, or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile in complete and legible form, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to the Administrative Agent, shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or (i) as to Company and Administrative Agent, such other address as shall be designated by such Person in a written notice delivered to the other parties hereto and (ii) as to each other party, such other address as

shall be designated by such party in a written notice delivered to Administrative Agent. Electronic mail and Internet and intranet websites may be used to distribute routine communications, such as financial statements and other information as provided in subsection 6.1. Administrative Agent or Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. As of the Closing Date, Administrative Agent has agreed to accept such electronic delivery of the items required to be delivered by Company under subsection 6.1.

Loan Documents and notices under the Loan Documents may be transmitted and/or signed by telefacsimile and by signatures delivered in 'PDF' format by electronic mail; provided, however, that no signature with respect to any notice, request, agreement, waiver, amendment or other document that is intended to have binding effect may be sent by electronic mail. The effectiveness of any such documents and signatures shall, subject to Applicable Law, have the same force and effect as an original copy with manual signatures and shall be binding on all Loan Parties, the Administrative Agent and Lenders. Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any facsimile document or signature.

10.9 Survival of Representations, Warranties and Agreements.

A. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Loans and the issuance of the Letters of Credit hereunder.

B. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Company set forth in subsections 2.6D, 2.7, 10.2, 10.3, 10.17 and 10.18 and the agreements of Lenders set forth in subsections 9.2C, 9.4, 10.5, 10.18 and 10.19 shall survive the payment of the Loans, and the termination of this Agreement.

10.10 Failure or Indulgence Not Waiver; Remedies Cumulative.

No failure or delay on the part of the Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.11 Marshalling; Payments Set Aside.

Neither any the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other party or against or in payment of any or all of the Obligations. To the extent that Company makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent for the benefit of Lenders), or the Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff,

and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any similar official in respect of a Loan Party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.12 Severability.

In case any provision in or obligation under this Agreement or the Notes shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.13 Obligations Several; Independent Nature of Lenders' Rights; Damage Waiver.

The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders, or Lenders and Company, as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to subsection 9.6, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

To the extent permitted by law, Company shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with or as a result of this Agreement (including, without limitation, subsection 2.1C hereof), any other Loan Document, any transaction contemplated by the Loan Documents, any Loan or the use of proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated thereby unless such use by an unintended recipient resulted from the gross negligence, bad faith or willful misconduct on the part of, or material breach of the Loan Documents by, such Indemnitee (or any of its Related Parties) as determined by a final judgment of a court of competent jurisdiction.

10.14 Release of Security Interest or Guaranty.

Upon the proposed sale or other disposition of any Collateral to any Person (other than an Affiliate of Company) that is permitted by this Agreement or to which Requisite Lenders have otherwise consented, or the sale or other disposition of all of the Capital Stock of a

Subsidiary Guarantor to any Person (other than an Affiliate of Company) that is permitted by this Agreement or to which Requisite Lenders have otherwise consented, for which a Loan Party desires to obtain a security interest release or a release of the Subsidiary Guaranty from Administrative Agent, such Loan Party shall deliver an Officer's Certificate (i) stating that the Collateral or the Capital Stock subject to such disposition is being sold or otherwise disposed of in compliance with the terms hereof and (ii) specifying the Collateral or Capital Stock being sold or otherwise disposed of in the proposed transaction. Upon the receipt of such Officer's Certificate, Administrative Agent shall, at such Loan Party's expense, so long as Administrative Agent (a) has no reason to believe that the facts stated in such Officer's Certificate are not true and correct and (b), if the sale or other disposition of such item of Collateral or Capital Stock constitutes an Asset Sale, shall have received evidence satisfactory to it that arrangements satisfactory to it have been made for delivery of the Net Asset Sale Proceeds as required by subsection 2.4, execute and deliver such releases of its security interest in such Collateral or such Subsidiary Guaranty, as may be reasonably requested by such Loan Party.

10.15 Applicable Law.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY SUCH LOAN DOCUMENT), AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

10.16 Construction of Agreement; Nature of Relationship.

Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement, (iii) this Agreement has been drafted jointly by all of the parties hereto, and (iv) neither Administrative Agent nor any Lender has any fiduciary relationship with or duty to Company arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent and Lenders, on one hand, and Company, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of another party.

10.17 Consent to Jurisdiction and Service of Process.

EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND ANY APPELLATE COURT FROM ANY RULING THEREOF, IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES

THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN THE BANKRUPTCY COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST COMPANY, THE LOAN PARTIES, OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY

(I) AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN THIS SECTION 10.17, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT;

(II) CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SUBSECTION 10.8, AND NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW; AND

(III) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (ii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER SUCH PARTY IN ANY SUCH PROCEEDING IN SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

10.18 Waiver of Jury Trial.

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will

continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SUBSECTION 10.18 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

10.19 Confidentiality.

Each Lender shall hold all non-public information obtained pursuant to the requirements of this Agreement that has been identified in writing as confidential by Company in accordance with such Lender's customary procedures for handling confidential information of this nature, it being understood and agreed by Company that in any event a Lender may make disclosures (a) to its and its Affiliates' directors, officers, employees, trustees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent requested by any Government Authority, (c) to the extent required by Applicable Laws or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this subsection 10.19, to any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement (but in no event to entities referred to in clause (ii) of the second proviso of the definition of "Eligible Assignee"), (g) with the consent of Company, (h) to the extent such information (i) becomes publicly available other than as a result of a breach of this subsection 10.19 or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Company or (i) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such Lender or its Affiliates or securities issued thereby; provided that, unless specifically prohibited by Applicable Law or court order, each Lender shall notify Company of any request by any Government Authority or representative thereof (other than any such request in connection with any examination of the financial condition of such Lender by such Government Authority) for disclosure of any such non-public information prior to disclosure of such information; and provided, further that in no event shall any Lender be obligated or required to return any materials furnished by Company or any of its Subsidiaries. Company and its Subsidiaries hereby agree that Administrative Agent, Lenders or any of their Affiliates may place customary "tombstone" advertisements (which may include any of Company's or its Subsidiaries' trade names or corporate logos and a brief description of the transactions contemplated by this Agreement) in publications or other media of their choice

(including, without limitation, “e-tombstones” published or otherwise circulated in electronic form and related hyperlinks to any of Company’s or its Subsidiaries’ corporate websites) at its own expense. In addition, Administrative Agent, Lenders and their Affiliates may disclose the existence of this Agreement and information regarding the transactions contemplated by this Agreement (including the parties, the amount of the Loans, and the Closing Date) to market data collectors and similar service providers to the financing community to the extent necessary to obtain “league table” or similar recognition for the transaction.

10.20 Customer Identification - USA PATRIOT Act Notice.

Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Loan Parties that, pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 (the “Act”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender or Administrative Agent, as applicable, to identify the Loan Parties in accordance with the Act.

10.21 Counterparts; Effectiveness.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.22 Paramountcy.

If there is any conflict or inconsistency between any provision of this Agreement and any provision of any other Loan Document, the provisions of this Agreement shall, to the extent necessary to resolve such conflict, govern.

10.23 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement, or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution, and (b) the effects of any Bail-in Action on any such liability, including, if applicable: (i) a reduction in full or in part or

cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document, or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Remainder of page intentionally left blank]

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

CST INDUSTRIES, INC.

By: _____
Title: _____

Notice Address:

LENDERS:

BNP PARIBAS,
individually and as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Notice Address:

Exhibit B

(Initial Budget)

DIP Cash Flow Model Summary	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	13 Week
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
(\$ in Thousands)	06/16/17	06/23/17	06/30/17	07/07/17	07/14/17	07/21/17	07/28/17	08/04/17	08/11/17	08/18/17	08/25/17	09/01/17	09/08/17	
Receipts														
Collections	\$ 1,582	\$ 2,384	\$ 2,700	\$ 2,589	\$ 3,144	\$ 3,144	\$ 4,017	\$ 2,508	\$ 3,154	\$ 3,154	\$ 3,358	\$ 3,517	\$ 3,749	\$ 39,001
Other	-	-	-	-	-	-	-	-	-	-	-	-	200	200
To/from UK Company	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Receipts	\$ 1,582	\$ 2,384	\$ 2,700	\$ 2,589	\$ 3,144	\$ 3,144	\$ 4,017	\$ 2,508	\$ 3,154	\$ 3,154	\$ 3,358	\$ 3,517	\$ 3,949	\$ 39,201
Operating Disbursements														
Payables & Capex	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (2,774)	\$ (2,799)	\$ (2,653)	\$ (2,653)	\$ (2,653)	\$ (2,628)	\$ (2,653)	\$ (2,849)	\$ (21,660)
Payroll	(500)	(901)	(540)	(864)	(492)	(816)	(492)	(809)	(485)	(809)	(485)	(809)	(516)	(8,519)
UK	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payments to Foreign Entities	-	(25)	-	-	-	(25)	-	-	-	-	(25)	-	-	(75)
Other	-	-	-	(100)	-	-	-	(100)	-	-	-	-	-	(200)
Total	\$ (500)	\$ (926)	\$ (540)	\$ (964)	\$ (492)	\$ (3,615)	\$ (3,291)	\$ (3,562)	\$ (3,138)	\$ (3,462)	\$ (3,138)	\$ (3,462)	\$ (3,365)	\$ (30,454)
Operating Cash Flow	\$ 1,082	\$ 1,458	\$ 2,160	\$ 1,625	\$ 2,653	\$ (470)	\$ 726	\$ (1,053)	\$ 16	\$ (308)	\$ 220	\$ 55	\$ 584	\$ 8,747
Bankruptcy Related														
Utility Deposits	\$ -	\$ -	\$ (250)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (250)
Transportation Deposits	-	-	(250)	-	-	-	-	-	-	-	-	-	-	(250)
Critical/Foreign Vendor Payments	-	-	(675)	(675)	(675)	(675)	-	-	-	-	-	-	-	(2,700)
KEIP/KERP	-	-	-	-	-	-	-	-	-	-	-	-	-	-
First Day Payments	-	-	(1,175)	(675)	(675)	(675)	-	-	-	-	-	-	-	(3,200)
AP Trade Tightening	(2,060)	(2,035)	(2,060)	(2,060)	(2,060)	-	-	-	-	-	-	-	-	(10,275)
Professional Fees	(200)	(25)	(1,315)	(25)	(25)	(25)	(1,260)	(25)	(25)	(25)	(25)	(25)	(1,225)	(4,225)
Total	\$ (2,260)	\$ (2,060)	\$ (4,550)	\$ (2,760)	\$ (2,760)	\$ (700)	\$ (1,260)	\$ (25)	\$ (25)	\$ (25)	\$ (25)	\$ (25)	\$ (1,225)	\$ (17,700)
Debt Service														
1L Interest	\$ -	\$ -	\$ (192)	\$ -	\$ -	\$ -	\$ (192)	\$ -	\$ -	\$ -	\$ -	\$ (192)	\$ -	\$ (575)
DIP Fees	(400)	-	-	-	-	-	-	-	-	-	-	-	-	(400)
DIP Cash Interest	-	-	(18)	-	-	-	(42)	-	-	-	-	(55)	-	(116)
Debt Service	\$ (400)	\$ -	\$ (210)	\$ -	\$ -	\$ -	\$ (234)	\$ -	\$ -	\$ -	\$ -	\$ (247)	\$ -	\$ (1,091)
NCF Before Draws	\$ (1,578)	\$ (602)	\$ (2,600)	\$ (1,135)	\$ (107)	\$ (1,170)	\$ (768)	\$ (1,078)	\$ (9)	\$ (333)	\$ 195	\$ (217)	\$ (641)	\$ (10,044)
Draw / (Repay)	1,288	602	2,600	1,135	107	1,170	768	1,078	9	333	(195)	217	641	9,754
Net Cash Flow	\$ (289)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (289)
Beginning Book Cash	\$ 1,789	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,789
Net Cash Flow	(289)	-	-	-	-	-	-	-	-	-	-	-	-	(289)
Ending Book Cash	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
Beginning DIP Balance	\$ -	\$ 1,288	\$ 1,891	\$ 4,490	\$ 5,625	\$ 5,733	\$ 6,903	\$ 7,671	\$ 8,750	\$ 8,759	\$ 9,091	\$ 8,896	\$ 9,113	\$ -
Draw / (Repay)	1,288	602	2,600	1,135	107	1,170	768	1,078	9	333	(195)	217	641	9,754
Ending DIP Balance	\$ 1,288	\$ 1,891	\$ 4,490	\$ 5,625	\$ 5,733	\$ 6,903	\$ 7,671	\$ 8,750	\$ 8,759	\$ 9,091	\$ 8,896	\$ 9,113	\$ 9,754	\$ 9,754
DIP Sublimit														
	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	
<i>Cushion</i>	10,712	10,109	7,510	6,375	6,267	5,097	4,329	3,250	3,241	2,909	3,104	2,887	2,246	