

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF JACK COOPER VENTURES, INC., JACK COOPER  
DIVERSIFIED, LLC, JACK COOPER ENTERPRISES, INC., JACK COOPER  
HOLDINGS CORP., JACK COOPER TRANSPORT COMPANY, INC., AUTO  
HANDLING CORPORATION, CTEMS, LLC, JACK COOPER LOGISTICS,  
LLC, AUTO & BOAT RELOCATION SERVICES, LLC, AXIS LOGISTIC  
SERVICES, INC., JACK COOPER CT SERVICES, INC., JACK COOPER RAIL  
AND SHUTTLE, INC., JACK COOPER INVESTMENTS, INC., NORTH  
AMERICAN AUTO TRANSPORTATION CORP., JACK COOPER  
TRANSPORT CANADA INC., JACK COOPER CANADA GP 1 INC., JACK  
COOPER CANADA GP 2 INC., JACK COOPER CANADA 1 LIMITED  
PARTNERSHIP, JACK COOPER CANADA 2 LIMITED PARTNERSHIP

APPLICATION OF JACK COOPER VENTURES, INC. UNDER SECTION 46 OF  
THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36,  
AS AMENDED

APPLICANT

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**AFFIDAVIT OF GREG R. MAY**

**(Sworn August 8, 2019)**

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I, Greg R. May, of the City of Independence, in the State of Missouri, **MAKE OATH  
AND SAY THAT:**

1. I am the Chief Financial Officer of Jack Cooper Ventures, Inc. (“JCV”) and the 18<sup>1</sup>  
other debtors in possession that recently filed voluntary petitions for relief pursuant to Chapter 11

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<sup>1</sup> In addition to Jack Cooper Ventures, Inc., the other 18 Chapter 11 Debtors are: Jack Cooper Diversified, LLC, Jack Cooper Enterprises, Inc., Jack Cooper Holdings Corp., Jack Cooper Transport Company, Inc., Auto Handling Corporation, CTEMS, LLC, Jack Cooper Logistics, LLC, Auto & Boat Relocation Services, LLC, Axis Logistic Services, Inc., Jack Cooper CT Services, Inc., Jack Cooper Rail And Shuttle, Inc., Jack Cooper Investments, Inc., North American Auto Transportation Corp., Jack Cooper Transport Canada Inc., Jack Cooper

of the U.S. Bankruptcy Code (the “**Chapter 11 Debtors**”). I have served as Chief Financial Officer of JCV since 2019. Prior to 2019, I served as Executive Vice President and Chief Administrative Officer of JCV since February 2017, after spending five years as the chief executive officer of Car Delivery Network. Prior to that, I spent 17 years with the JC Group (defined below) serving as President from 2005 to 2011 and Chief Financial Officer from 1998 to 2005. In total, I have over 30 years of experience in the trucking industry in executive roles and as a consultant to trucking industry clients.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Chapter 11 Debtors’ management team and advisors and reviewed relevant documents and information concerning the Chapter 11 Debtors’ operations, financial affairs and restructuring activities.

3. I swear this Affidavit in support of an application by JCV in its capacity as foreign representative of the Chapter 11 Debtors for, *inter alia*:

- (a) recognition of the Chapter 11 Cases (defined below) as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”);
- (b) recognition of certain First Day Orders (defined below);

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Canada GP 1 Inc., Jack Cooper Canada GP 2 Inc., Jack Cooper Canada 1 Limited Partnership, Jack Cooper Canada 2 Limited Partnership.

- (c) the appointment of Alvarez & Marsal Canada Inc. as Information Officer (as defined below) in respect of these proceedings;
- (d) the granting of the Administration Charge and the DIP Charges (all as defined below);
- (e) ordering JC Canada to deposit CDN \$500,000 with the Information Officer to be held in trust for the benefit of the Load Broker Parties (defined below) as security for the payment of amounts due and accruing to them in the ordinary course of business following the Petition Date (defined below), subject to further order of the Court; and
- (f) such further and other relief as counsel may request and this Honourable Court may grant.

4. All monetary references in this Affidavit are in US dollars unless otherwise stated.

## **I. BACKGROUND**

5. On August 6, 2019 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Georgia (the “**U.S. Court**”).

6. I am advised that copies of the Petitions will be attached to the affidavit of Waleed Malik (the “**Malik Affidavit**”), an associate lawyer with the law firm of Osler, Hoskin & Harcourt LLP (“**Osler**”), Canadian counsel to the Chapter 11 Debtors, and will be provided to the Court at or before the hearing of this Application.

7. The cases commenced by the Chapter 11 Debtors in the U.S. Court are referred to in this Affidavit as the “**Chapter 11 Cases**”.

8. Concurrently with or shortly after the filing of the Petitions, the Chapter 11 Debtors filed several first day motions with the U.S. Court on August 6, 2019. On August 8, 2019, the U.S. Court heard such first day motions, including the following (collectively, the “**First Day Motions**”, all of which are defined separately below):

- (a) Foreign Representative Motion;
- (b) Joint Administration Motion;
- (c) Cash Management Motion;
- (d) Critical Vendor Motion;
- (e) DIP Motion;
- (f) Insurance Motion;
- (g) Wages Motion;
- (h) Surety Bond Motion;
- (i) Taxes and Fees Motion;
- (j) Utilities Motion;
- (k) Customer Programs Motions;
- (l) Equity Transfer Motion; and

(m) Prime Clerk Motion.

I am advised that copies of the First Day Motions (including all schedules and exhibits except the proposed draft orders) will be attached to the Malik Affidavit.

9. The U.S. Court entered interim and/or final First Day Orders (as defined below) in respect of each of the above-noted First Day Motions on August 8, 2019. I understand that copies of the First Day Orders (including a certified copy of the Foreign Representative Order (defined below)) will be attached to the Malik Affidavit.

10. Capitalized terms in this Affidavit that are not otherwise defined herein have the meanings given to them in my declaration sworn August 6, 2019 and filed in support of the First Day Motions attached hereto without exhibits as **Exhibit “A”** (the **“First Day Declaration”**).

11. The First Day Declaration provides a comprehensive overview of the Chapter 11 Debtors and the Non-Debtor Affiliates<sup>2</sup> (collectively, the **“JC Group”**) and the events leading to the commencement of the Chapter 11 Cases. As such, this Affidavit provides a more general overview of the Chapter 11 Debtors and focuses on giving this Honourable Court information to support the finding of the center of main interest (**“COMI”**) of each of the Chapter 11 Debtors and to support the request for recognition of the Chapter 11 Cases as a “foreign main proceeding”, the recognition of the First Day Orders, including the Interim DIP Order, and the granting of the Administration Charge and the DIP Charges. I am not aware of any other foreign recognition insolvency proceedings involving the Chapter 11 Debtors.

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<sup>2</sup> The Non-Debtor Affiliates are JCSV Dutch Cooperatief U.A., JCH Mexico S. de R.L. de C.V., AXIS Operadora Hermosillo SA, AXIS Operadora Mexico SA, AXIS Operadora Monterrey SA, AXIS Operadora Guadalajara SA, AXIS Logistica SRL, Areta SRL, and AXIS Trslados SRL.

## II. THE BUSINESS

### A. Overview

12. The JC Group is a leading provider of finished vehicle logistics in North America for both new and used vehicles, as well as a provider of logistical services in select non-automotive markets. The JC Group is divided into two segments: a transport segment and a diversified asset-light logistics segment.

13. The JC Group's transport segment is a market leader in over-the-road finished vehicle logistics. The transport segment delivers finished vehicles from manufacturing plants, vehicle distribution centres, seaports and railheads to new vehicle dealerships. The JC Group operates a fleet of approximately 1,600 active rigs and a network of 39 terminals across the United States and Canada to haul primarily new vehicles, including two-door automobiles, light trucks, sport utility vehicles and transit vans, including 128 active rigs in Canada (as at June 30, 2019) and 11 Canadian terminals. In 2018, the JC Group transported over 2.5 million finished vehicles and generated operating revenue of \$540.7 million relating to the transport segment.

14. The JC Group's customers in the transport segment are primarily major domestic and foreign original equipment manufacturers, including General Motors ("GM"), Ford Motor Company ("Ford"), Toyota Motor Corporation ("Toyota"), Fiat Chrysler ("Chrysler"), Hyundai Motor Company ("Hyundai"), and Kia Motor Corporation ("Kia"). For the years ended December 31, 2018 and 2017, the JC Group's three largest customers, GM, Ford and Toyota, collectively accounted for the vast majority of total revenues. The JC Group has developed and maintained long-term relationships with their original equipment manufacturer customers and have historically been successful in negotiating contract renewals. Under written contracts, the JC Group has served GM since 1928, Toyota since 1979, and Ford since 1992.

15. The diversified asset-light logistics segment provides a wide range of asset-light services to the previously owned vehicle market, including vehicle inspections, automated claims management, title and key storage services, brokerage and export services, export processing, third-party logistics management and other technical services. The JC Group also helps its customers move vehicles to and from dealerships, inspection lots, and auctions by coordinating transportation by third-party trucking or rail providers. The logistics segment's customers include fleet ownership companies, remarketers, dealers, auctioneers, and relocation-management companies. For the year ended December 31, 2018, the diversified asset-light logistics segment generated operating revenues of approximately \$55.9 million.

16. Jack Cooper Transport Canada Inc. ("**JC Canada**") and its subsidiaries, Jack Cooper Canada GP 1 Inc. ("**GP1**"), Jack Cooper Canada GP 2 Inc. ("**GP2**"), Jack Cooper Canada 1 Limited Partnership ("**LP1**"), and Jack Cooper Canada 2 Limited Partnership ("**LP2**", and collectively with JC Canada, GP1, GP2 and LP1, the "**JC Canada Group**") provide transport segment services to customers of the JC Group throughout Canada. For the most recent financial year ended December 31, 2018, the JC Canada Group accounted for approximately \$30.41 million in gross revenue (approximately 5% of the JC Group's total gross operating revenue and approximately 6% of the JC Group's transport segment gross operating revenue).

17. The JC Canada Group does not operate or provide any services in the JC Group's diversified asset-light logistics segment.

## **B. The Chapter 11 Debtors**

18. All of the Chapter 11 Debtors operate on an integrated basis and are incorporated or established under the laws of the United States, with the exception of the JC Canada Group which is comprised of:

- (a) JC Canada, which is incorporated under the *Canada Business Corporations Act* and which maintains a registered office at 66 Wellington Street West, Suite 5300, Toronto, Ontario. JC Canada is the registered and beneficial owner of 100% of the common shares of each of GP1 and GP2, and is the limited partner (99.99% interest) in each of LP1 and LP2;
- (b) GP1, which is incorporated under the *Business Corporations Act* (Ontario) (“**OBCA**”) and which maintains a registered office at 235100 Ryan Road, Rocky View County, Alberta. GP1 is the general partner (.01% interest) in LP1;
- (c) GP2, which is incorporated under the OBCA and which maintains a registered office at 2709 Av De La Ronde, Levis, Quebec. GP2 is the general partner (.01% interest) in LP2;
- (d) LP1, which is a partnership formed under the *Limited Partnerships Act* (Ontario) (“**LPA**”) between JC Canada as limited partner (99.99% interest) and GP1 Inc. as general partner. LP1 maintains a registered office at 66 Wellington Street West, Suite 5300, Toronto, Ontario; and
- (e) LP2, which a partnership formed under the LPA between JC Canada as limited partner (99.99% interest) and GP2 as general partner (.01% interest). LP2 maintains a registered office at 66 Wellington Street West, Suite 5300, Toronto, Ontario.

19. Each of the Chapter 11 Debtors, including the JC Canada Group, is a direct or indirect wholly-owned subsidiary of Jack Cooper Investments, Inc. A copy of the JC Group Organizational Chart is attached hereto as **Exhibit “B”**.

### **C. Non-Debtor Affiliates**

20. The Chapter 11 Debtors have the following Non-Debtor Affiliates:
- (a) JCSV Dutch Cooperatief U.A. which is incorporated under the laws of the Netherlands and which is the majority interest holder in JCH Mexico S. de R.L. de C.V.; and
  - (b) JCH Mexico S. de R.L. de C.V., AXIS Operadora Hermosillo SA, AXIS Operadora Mexico SA, AXIS Operadora Monterrey SA, AXIS Operadora Guadalajara SA, AXIS Logistica SRL, Areta SRL, AXIS Trslados SRL, all of which are incorporated under the laws of Mexico and which operate out of Mexico.
21. None of the Non-Debtor Affiliates are liable for any of the Chapter 11 Debtors' outstanding funded debt obligations.

**D. Financial Position of the JC Canada Group**

22. There are no stand-alone audited financial statements for the JC Canada Group. JC Canada's unaudited financial statements have historically been consolidated with the JC Group's financial statements, and audited on a consolidated basis.
23. On a standalone basis, the JC Canada Group is not profitable. As detailed further below, the JC Canada Group only remains cash flow positive because the U.S. Chapter 11 Debtors provide all back office and overhead services to the JC Canada Group, and such amounts are not paid in cash by the JC Canada Group. As at June 30, 2019, the JC Canada Group owed intercompany debts of almost \$17 million to its U.S. affiliates.

24. A copy of the JC Canada Group's unaudited trial balance as at June 30, 2019 (the "Trial Balance") is attached hereto as Exhibit "C". The Trial Balance is a direct report from the Chapter 11 Debtors' accounting system, which is summarized below:

25. A review of the information contained in the Trial Balance is as follows:

**(i) Assets**

As at June 30, 2019, the JC Canada Group had total assets of \$8,869,757 comprised of:

- Cash –\$1,446,362
- Accounts Receivable –\$3,944,692
- Prepaids and Other Assets - \$1,145,534
- Inventory - \$294,032
- Property and Equipment - \$2,039,137

**(ii) Liabilities**

As at June 30, 2019, the JC Canada Group had total liabilities of \$19,103,505, comprised of:

- Accounts Payable – \$1,161,527
- Accrued Liabilities –\$1,088,838
- Net Intercompany Balance –\$16,853,141

The above-noted intercompany balance is comprised of various intercompany transactions between the JC Canada Group and their U.S. affiliates giving rise to a net balance owing by the JC Canada Group. The intercompany transactions include payments by the U.S. Chapter 11 Debtors of operating expenses of the JC Canada Group, including on account of credit card transactions, communications expenses, utilities, third party maintenance charges, parts, licensing fees, rent, and other miscellaneous items. In addition, the U.S. Chapter 11 Debtors provide various back office support services for the JC Canada Group as detailed below, and allocate selling, general and administrative expenses to the JC Canada Group on a monthly basis at cost plus a margin. Lastly, Jack Cooper Transport Company, Inc. and North American Auto Transportation Corp. lease certain trucks and trailers to the JC Canada Group at market rates. All of these intercompany transactions are settled pursuant to accounting entries rather than paid in cash.

**(iii) Employees**

26. As of the date of the Petition Date, the Chapter 11 Debtors have 2,884 employees in the United States and Canada, including 1,516 drivers, 507 yard personnel, 201 mechanics, 92 vehicle inspectors, and 523 other personnel that perform a variety of functions critical to the Chapter 11 Debtors' operations (e.g., sales, marketing, legal, accounting, administration, and management). Of the 2,884 employees employed by the Chapter 11 Debtors, 2,478 are full-time employees, 256 are part-time employees and 150 are on leaves of absence (e.g., on workers' compensation or maternity leave).

27. Of the 2,884 employees employed by the Chapter 11 Debtors, approximately 181 are resident in Canada and employed by a member of the JC Canada Group as set out below:

<b>Province</b>	<b>Location</b>	<b>Non-Union</b>	<b>Union</b>	<b>Total</b>
	Virtual	4	0	4

<b>Province</b>	<b>Location</b>	<b>Non-Union</b>	<b>Union</b>	<b>Total</b>
AB	Calgary	5	40	45
AB	Edmonton	4	43	47
BC	Vancouver	2	9	11
MB	Winnipeg	1	12	13
NB	Moncton	1	2	3
NS	Halifax	2	11	13
ON	Cambridge	0	4	4
ON	Oshawa	3	2	5
QC	Charny	1	25	26
SK	Saskatoon	1	9	10
	<b>GRAND TOTAL</b>	<b>24</b>	<b>157</b>	<b>181</b>

28. Included in the 181 employees of the JC Canada Group are approximately 15 contractors (the “**Owner/Operators**”) retained by GP1 in Western Canada to provide over-the-road logistical services exclusively to GP1 using vehicles owned and operated by the Owner/Operator. Prior to providing services to GP1, each Owner/Operator must execute a standard Contractor’s Agreement which provides, among other things, that the Owner/Operator will provide exclusive possession, control and use of the equipment/vehicle to GP1 for the duration of the agreement. All Owner/Operators are covered either by the BC CBA (as defined below) or the Prairie CBA (defined below), depending on their domiciled location.

**(iv) Collective Agreements**

29. Many of the JC Canada Group’s employees and Owner/Operators are parties to the following eight (8) collective agreements (the “**Canadian CBAs**”):

- (a) Collective Agreement between JC Canada and Teamsters Local Union No. 213, effective April 1, 2018 for all Owner/Operators working in Mainland British Columbia or on Vancouver Island, including any marshalling yard operated by LP1 (the “**BC CBA**”). Each unionized Owner/Operator contributes all union premiums

payable under the BC CBA pursuant to payroll deduction. As of June 1, 2019, nine (9) Owners/Operators were unionized under the BC CBA;

- (b) Collective Agreement between Allied Systems (Canada) Company and General Teamsters Local Union No. 362, effective February 13, 2011 for all office employees working in Edmonton, Alberta (the “**Edmonton CBA**”). Each unionized employee contributes all union premiums payable under the Edmonton CBA pursuant to payroll deduction. As of June 1, 2019, 3 employees were unionized under the Edmonton CBA;
- (c) Collective Agreement between LP1 and the Western Canada Council (General Teamsters Local Union No. 362, Teamsters Local Union No. 395, and Teamsters Local Union No. 979), effective June 22, 2014, for all employees and Owner/Operators working as highway drivers, city drivers, yard personnel, mechanics, welders, shop leadhands, or utility/washers/drive-away personnel in Alberta, Saskatchewan and Manitoba (the “**Prairie CBA**”). Each unionized employee and Owner/Operator contributes all union premiums payable under the Prairie CBA pursuant to payroll deduction. As of June 1, 2019, 72 employees and Owners/Operators were unionized under the Prairie CBA;
- (d) Collective Agreement between Jack Cooper Canada LP2 and Unifor Locals 27, 698, 1044 and 1090, effective January 11, 2014 (the “**Unifor CBA**”), for: (i) all employees (save and except foreman, those above the rank of foreman, office staff, sales staff, security guards, janitors, watchmen and stockmen) working at the Charny, Quebec terminal; and (ii) all retired employees unionized under the Unifor CBA in Ontario and Quebec. Each unionized employee contributes all union

premiums payable under the Unifor CBA pursuant to payroll deduction. As of June 1, 2019, 27 employees, 13 retirees in Quebec, and 8 retirees in Ontario were unionized under the Unifor CBA;

- (e) Collective Labour Agreement between Teamsters Quebec, Local 106 and LP2, effective July 1, 2019 (the “**Quebec Teamsters CBA**”) for office employees working at the Charny, Quebec terminal. Each unionized employee contributes all union premiums payable under the Quebec Teamsters CBA pursuant to payroll deduction. As of June 1, 2019, three (3) employees were unionized under the Quebec Teamsters CBA;
- (f) Collective Agreement between LP1 and Teamsters Local 927, effective March 1, 2015, for all company drivers, yardmen, checkers, garage employees, brokers and clerical employees in Nova Scotia (the “**Atlantic CBA**”). Each unionized employee contributes all union premiums payable under the Atlantic CBA pursuant to payroll deduction. As of June 1, 2019, 11 employees and 4 retired employees were unionized under the Atlantic CBA;
- (g) Collective Labour Agreement between Canada Council of Teamsters and JC Canada Ontario Division, effective November 14, 2016, for all drivers of JC Canada working from any location in Ontario, excluding supervisors, dispatchers and those of higher rank (the “**Legacy Ontario CBA**”). The Legacy Ontario CBA is a legacy Agreement which, at present, only governs the contributions which JC Canada makes to a group registered retirement saving plan (discussed further below) for drivers in its Oshawa and Cambridge, Ontario terminals. No monthly union fees are payable thereunder; and

- (h) Collective Labour Agreement between Teamsters Quebec Local 106 and JC Canada, effective December 19, 2015 (the “**Legacy Moncton CBA**”). The Legacy Moncton CBA is a legacy agreement which, at present, only governs the contributions which JC Canada makes to a multi-employer, union-sponsored pension plan (discussed further below) for drivers in its Moncton, New Brunswick terminal. No monthly union fees are payable thereunder.

**(v) Pension and Benefit Plans**

30. The JC Canada Group also pays into a number of multi-employer, union-sponsored pension plans for its Canadian employees. The funding obligations of the applicable member of the JC Canada Group under each pension plan is limited to payment of the contribution amounts required by the applicable Canadian CBA. A list of the JC Canada Group pension plans is as follows:

- (a) Pursuant to the Prairie CBA and the Edmonton CBA, LP1 contributes Cdn\$2.25 per hour worked by each unionized employee and Owner/Operator to the Teamsters Prairie Provinces Pension Plan (T4P), administered by Prairie Teamsters Administration Services Ltd. All contributions to the Teamsters Prairie Provinces Pension Plan are remitted monthly by LP1 prior to the 15<sup>th</sup> day of each month;
- (b) Pursuant to the Unifor CBA, LP2 contributes Cdn\$598 per month per unionized employee to a multi-employer pension plan that is sponsored by Unifor. Each unionized employee contributes Cdn\$160 per month to the Registered Pension Plan pursuant to payroll deductions;

- (c) Pursuant to the Quebec Teamsters CBA, LP2 contributes Cdn\$578 per month per unionized employee to the Teamsters Canadian Pension Plan – Local 106 miscellaneous Industries Division, administered by Teamsters Local 106. Each unionized employee contributes Cdn\$140 per month to the Pension Plan pursuant to payroll deductions; and
- (d) Pursuant to the Legacy Moncton CBA, JC Canada contributes Cdn\$500 per month per unionized employee to the Teamsters Canadian Pension Plan – Local 106 Miscellaneous Industries Division, administered by Teamsters 106.

31. The JC Canada Group also participates in three group registered retirement savings plans (“RRSP”) in respect of its employees, as follows:

- (a) Pursuant to the Legacy Ontario CBA, JC Canada contributes Cdn\$161.56 per week per employee to a group RRSP plan provided by Canada Council of Teamsters. Each employee contributes Cdn\$50.00 per week of pay pursuant to payroll deductions.
- (b) Pursuant to the Atlantic CBA, LP1 contributes Cdn\$552.80 per month per employee to a group RRSP plan provided by Sun Life Assurance Company of Canada. Each employee contributes Cdn\$25.00 per week of pay pursuant to payroll deductions; and
- (c) All salaried employees of the JC Canada Group are eligible to participate in a group RRSP plan with Manulife Financial on a voluntary basis. All RRSP contributions are wholly employee-funded based on monthly contributions pursuant to payroll

deductions. The JC Canada Group does not make any contributions to the Manulife RRSP plan.

32. The JC Canada Group also provides benefits coverage to its employees and Owner/Operators, and to certain retirees, through group benefits plans issued by Manulife Financial under Group Policy No. G0090450 (the “**Benefit Plans**”). The Benefit Plans are designed to assist and protect eligible employees, Owners/Operators, and their dependents in the event of a serious illness, accident, or death, and to help cover the cost of various health and wellness-related items.

33. As described further in the Wages Motion, the Chapter 11 Debtors are seeking relief to continue to pay and/or perform, as applicable, employee related obligations, including those of the JC Canada Group. The JC Canada Group pays its priority payables in the ordinary course, including employee wages, vacation pay, employee source deductions and federal and provincial taxes. As of August 7, 2019, the JC Canada Group had accrued but unpaid liabilities to its employees and Owner/Operators of \$140,000 and \$210,000, respectively (excluding taxes and other source deductions). The Chapter 11 Debtors intend to continue to honour vacation entitlements and to remit source deductions and payroll taxes in the normal course.

34. In addition to the foregoing, I am advised by Andrea Lockhart of Osler, Canadian counsel to the Chapter 11 Debtors that the *Highway Traffic Act* (Ontario) imposes an obligation on the JC Canada Group to hold in trust amounts owed by the JC Canada Group to (i) the Owner/Operators and (ii) third party carriers engaged by the JC Canada Group to haul goods ((i) and (ii), collectively, the “**Load Broker Parties**”). The Chapter 11 Debtors are seeking permission pursuant to the First Day Motions to pay amounts accrued due to the Load Broker Parties as at the Petition Date and to continue to pay amounts owing to the Load Broker Parties in the normal

course. Additionally, the JC Canada Group is seeking authority pursuant to the proposed form of Supplemental Order to segregate CDN \$500,000 of their funds to be held in trust by the proposed Information Officer for the benefit of the Load Broker Parties as security for the payment of amounts due and accruing to them in the ordinary course of business following the Petition Date.

**(vi) Operations in Canada**

35. The JC Canada Group provides transport segment services to customers of the JC Group throughout Canada. The JC Canada Group currently operates eleven (11) trucking terminals in Canada:

- (a) JC Canada leases three (3) trucking terminals in (i) Oshawa, Ontario, (ii) Cambridge, Ontario, (iii) and Moncton, New Brunswick from which it provides over-the-road finished vehicle logistic services;
- (b) LP1: (i) leases five (5) trucking terminals in Vancouver, British Columbia, Edmonton, Alberta, Calgary, Alberta, Saskatoon, Saskatchewan and Halifax, Nova Scotia; (ii) owns one (1) terminal in Winnipeg, Manitoba; and (iii) operates one (1) terminal in Regina, Saskatchewan, from which it provides over-the-road finished vehicle logistic services. LP1 also provides maintenances services to its Western Canadian fleet at its Edmonton and Calgary trucking terminals, and a storage yard at its Winnipeg trucking terminal; and
- (c) LP2 leases (1) trucking terminal in Charny, Quebec from which it provides over-the-road finished vehicle logistic services.

36. The JC Canada Group does not operate or provide any services in the JC Group's diversified asset-light logistics segment.

37. Prior to early 2019, JC Canada leased a general office in Hamilton, Ontario from which approximately three (3) employees of JC Canada provided the JC Canada Group with Canadian fleet licensing, safety, human resources, and other limited services. As of January 31, 2019, the lease between JC Canada and the applicable landlord expired, following which all of these employees have worked remotely from their homes or other private locations.

38. The JC Canada Group does not own any real property in Canada other than the property municipally known as 737 Plinquet, Winnipeg, Manitoba owned by GP1 from which LP1 operates its Winnipeg terminal and maintenance shop (the “**Winnipeg Property**”).

39. The JC Group’s largest customers are GM, Ford, and Toyota which collectively accounted for the vast majority of total revenues. While the applicable contracts for GM and Ford are negotiated, executed, managed and largely performed in the United States, over-the-road finished logistical services required by each customer in Canada are provided by the JC Canada Group. The Canadian-specific services provided by the JC Canada Group to Ford comprise approximately 52% of the revenues realized by the JC Canada Group in 2018. The Canadian-specific services provided by the JC Canada Group to GM comprise approximately 8% of the revenues realized by the JC Canada Group in 2018. The JC Canada Group does not provide services to Toyota.

40. JC Canada is also party to a number of contracts with major foreign original equipment manufacturers and other customers which are negotiated and managed in the United States, but which are performed in Canada and to which only JC Canada is party. The largest such contract is between JC Canada and Glovis Canada, Inc. (“**Glovis**”), on behalf of Kia and Hyundai, pursuant to which the JC Canada Group provides over-the-road finished logistical services to Kia

and Hyundai throughout Canada. Kia and Hyundai together comprise approximately 22% of the JC Canada Group's revenues for 2018.

**(vii) The JC Canada Group's Integrated Operations with U.S.**

41. The JC Canada Group's operations are fully integrated with the Chapter 11 Debtors' U.S. operations. Among other things:

- (a) Financial reporting for the JC Group is done on a consolidated basis in Kansas City, Missouri, by the JC Group's finance department, accounting department and management. The JC's Group's annual consolidated financial statements have been audited by KPMG LLP in Kansas City, Missouri since 2011;
- (b) The JC Canada Group is almost wholly reliant on U.S. managerial services at the JC Group's head office in Kansas, Missouri for overhead services, including accounting, finance, purchasing, logistics, marketing, human resources, IT and other functions. These services are provided for the JC Canada Group's benefit by their U.S. affiliates;
- (c) The entire JC Group shares a common operating platform which is located and operated in Kansas City, Missouri by the JC Group's IT department;
- (d) Apart from one (1) Vice-President who is resident in Ontario, all officers of JC Canada, GP1, and GP2 are residents of the United States;
- (e) Two of the three directors of JC Canada are residents of the United States;

- (f) All risk management, including the procurement of required corporate insurance policies for the JC Group, including the JC Canada Group, is managed in the United States at the JC Group's head office;
- (g) All short, medium and long-term corporate strategies for the entire JC Group are developed by the management team of the JC Group in the United States with input from the one (1) Canadian-based Vice-President on issues and considerations unique to the JC Canada Group;
- (h) All customer relations, including the negotiation, execution and management of all customer contracts for the JC Group, are managed in the United States;
- (i) Apart from one (1) service agreement and one (1) software licensing agreement held by Jack Cooper CT Services, Inc. all intellectual property licenses used by the JC Group are held by Jack Cooper Transport Company, Inc.;
- (j) All patents, trademarks and copyrights used by the JC Group are patented or trademarked under United States law and owned by one or more of the JC Group's U.S. entities;
- (k) All corporate purchasing of supplies including, but not limited to, fuel, tires, parts, office supplies, and janitorial services, is completed in the JC Group's purchasing department in Kansas City, Missouri; and
- (l) Apart from the relationship with Glovis, which is jointly maintained by the JC Canada Group and the JC Group's marketing team in Kansas City, Missouri, all marketing and customer relations are handled in the U.S.

42. In addition, the Chapter 11 Debtors and the Non-Debtor Affiliates operate an integrated, centralized cash management system (the “**Cash Management System**”) to collect, transfer and disburse funds generated by their operations, all of which is described more fully in the Cash Management Motion (defined below). The Cash Management System facilitates cash monitoring, forecasting, and reporting and enables the Chapter 11 Debtors to maintain control over the administration of thirty-three (33) bank accounts.<sup>3</sup> Thirty (30) of the bank accounts are located in the United States with twenty-six (26) held at Wells Fargo Bank, N.A., three (3) at Bank of America, N.A., and one (1) at TD Bank, N.A. The remaining three (3) bank accounts are located in Canada and are held at Scotiabank.

43. Of the thirty-three (33) bank accounts maintained by the Chapter 11 Debtors, five (5) bank accounts are maintained for the JC Canada Group’s Canadian operations, as follows:

- (a) *Lockbox account*: JC Canada maintains one (1) lockbox account at Scotiabank that receives customer receipts paid by cheque. Funds are wired from the lockbox account directly into a depositary account maintained by JC Canada at Scotiabank (the “**Depositary Account**”) on a nightly basis;
- (b) *Depositary Account*: JC Canada maintains one (1) Depositary Account at Scotiabank in Canada which is the central account for JC Canada and operates as the primary receipt and disbursement point for funds in connection with all Canadian operations, including funds received from the lockbox account;

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<sup>3</sup> There are approximately nineteen (19) other bank accounts maintained in the name of, and for the benefit of the Non-Debtor Affiliates. These accounts are operated on a standalone basis by the applicable Non-Debtor Affiliate and are not part of the Chapter 11 Debtors’ Cash Management System. Therefore, they are not discussed in this Affidavit.

- (c) *Legacy account:* JC Canada maintains a legacy account with Scotiabank in Canada which occasionally receives cheques;
- (d) *U.S. dollar chequing account:* JC Canada maintains a U.S. dollar chequing account with Wells Fargo in the U.S. which is utilized to make disbursements on an as needed basis; and
- (e) *U.S. depository account:* JC Canada maintains a U.S. depository account with Wells Fargo in the U.S. from which funds are transferred to Jack Cooper Transport Company, Inc.'s main operating account at Wells Fargo in the U.S. on a monthly basis.

44. The Chapter 11 Debtors' Cash Management System is managed wholly by the JC Group's finance department and accounting department in the United States. The JC Group's finance personnel maintain daily oversight over the Cash Management System and implement cash management controls for entering, processing, and releasing funds. The JC Group's accounting department regularly reconciles the Chapter 11 Debtors' books and records to ensure that all transfers have appropriate authorizations and are accounted for properly.

45. As part of the Cash Management System, all accounts receivable and payable, all data processing and payroll, and all tracking and reconciliation of intercompany transactions is managed for the entire JC Group, including the JC Canada Group, in the United States.

46. The Cash Management System reflects the JC Group's integrated business, is vital to the Chapter 11 Debtors' ability to conduct business across North America and is tailored to meet their operating needs. Any disruption of the Cash Management System would be extremely

detrimental to the Chapter 11 Debtors' operations, as their businesses require prompt access to cash and accurate cash tracking.

### **III. PREPETITION CAPITAL STRUCTURE AND INDEBTEDNESS**

#### **A. Chapter 11 Debtors' Prepetition Capital Structure and Indebtedness**

47. The Chapter 11 Debtors' prepetition capital structure consists of outstanding funded-debt obligations in the aggregate principal amount of \$575.4 million, including:

- (a) An \$85 million senior secured revolving credit facility (the "**ABL Facility**") by and between Jack Cooper Holdings Corp. and certain of its subsidiaries, Wells Fargo Capital Finance, LLC ("**Wells Fargo**") as lead arranger, sole bookrunner and administrative agent (in such capacity, the "**ABL Agent**") and the lenders party thereto.
- (b) A \$196 million senior secured term loan due 2023 by and between Jack Cooper Ventures, Inc., Cerberus Business Finance Agency, LLC ("**Cerberus**"), as agent for and on behalf of the lender parties thereto (the "**Cerberus Senior Secured Term Loan**").
- (c) A \$41 million junior secured term loan facility due 2024 (the "**1.5 Lien Term Loan**") by and between JCV and Wilmington Trust, National Association, as agent for and on behalf of the lenders party thereto (the "**1.5 Lien Term Loan Lender**").
- (d) A \$261.1 million junior secured term loan facility due 2024 (the "**Second Lien Term Loan**" and together with the 1.5 Lien Term Loan, the "**Junior Term Loans**") between JCV and Wilmington Trust, National Association, as agent for

and on behalf of the lenders party thereto (the “**Second Lien Term Loan Lender**” and, together with the 1.5 Lien Term Loan Lender, the “**Junior Term Loan Lenders**”).

**B. Prepetition ABL Facility**

48. Obligations under the ABL Facility are secured on a first-priority basis by liens on certain collateral of the Chapter 11 Debtors, including accounts receivable, inventory, deposit accounts, and securities accounts (subject to certain limited exclusions), including instruments, chattel paper, guarantees, letters of credit, and claims relating to such accounts receivable (the “**ABL Priority Collateral**”). Obligations under the ABL Facility (i) with respect to the Chapter 11 Debtors other than the JC Canada Group (the “**U.S. Chapter 11 Debtors**”) are also secured on a fourth-priority basis, and (ii) with respect to the JC Canada Group, are also secured on a first priority basis, in each case by liens on the Term Loan Priority Collateral (defined below).

49. As of the Petition date, approximately \$49.8 million was outstanding under the ABL Facility.

50. The ABL Facility includes a Canadian sub-facility that permits JC Canada, LP1 and LP2 (the “**Canadian Borrowers**”) to borrow up to \$5 million. The amount available to the Canadian Borrowers at any one time under the Canadian sub-facility is determined by a borrowing base calculation based on eligible accounts receivable and inventory of the Canadian Borrowers less letters of credit issued on behalf of the Canadian Borrowers and other offsets. The amount that the U.S. borrowers may borrow at any given time under the ABL Facility is reduced on a dollar-for-dollar basis by the amount of any outstanding borrowings under the Canadian sub-facility.

51. The Canadian Borrowers have not guaranteed or otherwise granted security for the obligations of the U.S. loan parties under the ABL Facility. However, the U.S. loan parties have guaranteed the Canadian Borrower's obligations under the ABL Facility (the "**Canadian Obligations**") on a secured basis. GP 1 and GP 2 (the "**Canadian Guarantors**") have guaranteed the Canadian Obligations pursuant to a Canadian Guarantee Agreement dated as of February 15, 2018.

52. Pursuant to a Canadian Security Agreement between the Canadian Borrowers, the Canadian Guarantors and the ABL Agent dated as of February 14, 2018 and a Deed of Hypothec between the Canadian Borrowers, the Canadian Guarantors and the ABL Agent dated as of February 14, 2018, each Canadian Borrower and each Canadian Guarantor granted a security interest in substantially all of its present and after acquired personal property, including the proceeds thereof, to secure the Canadian Obligations.

53. As of the Petition Date, there were no outstanding borrowings under the Canadian sub-facility.

### **C. Prepetition Term Loan Facilities**

54. Obligations under the Cerberus Senior Secured Term Loan are secured on: (a) a first-priority basis by liens on substantially all of the assets of the U.S. Chapter 11 Debtors not constituting ABL Priority Collateral (subject to certain customary exclusions), including equity pledges (including pledges of 65% of the equity of first-tier foreign subsidiaries including, but not limited to, JC Canada), interests in real property (including fixtures), equipment (including vehicles), intellectual property, pledged debt instruments, deposit accounts and securities accounts, and all intangibles, instruments, chattel paper, letter-of-credit rights and supporting obligations of

the foregoing (collectively, the “**Term Loan Priority Collateral**”); and (b) a second-priority basis by liens on the ABL Priority Collateral of the U.S. Chapter 11 Debtors.

55. As of the Petition date, approximately \$188.7 million was outstanding under the Cerberus Senior Secured Term Loan.

56. Obligations under:

- (a) the 1.5 Lien Term Loan is secured on a second-priority basis by liens on the Term Loan Priority Collateral of the U.S. Chapter 11 Debtors and on a third-priority basis by liens on the ABL Priority Collateral of the U.S. Chapter 11 Debtors; and
- (b) the Second Lien Term Loan is secured on a third-priority basis by liens on the Term Loan Priority Collateral of the U.S. Chapter 11 Debtors and on a fourth-priority basis by liens on the ABL Priority Collateral of the U.S. Chapter 11 Debtors.

57. As of the Petition Date, approximately \$45.5 million and \$291.4 million was outstanding under the 1.5 Lien Term Loan and the Second Lien Term Loan, respectively.

**D. JC Canada Group Trade Debt**

58. Based on the JC Canada Group’s books and records, as at the Filing Date, approximately \$850,000 is owed to unsecured trade creditors, comprised of the following:

- (a) approximately \$400,000 owing to the Load Broker Parties and other critical vendors. As discussed further in the Critical Vendor Motion, the Chapter 11 Debtors are seeking relief to pay the Load Broker Parties and other critical vendors during these Chapter 11 Cases; and

- (b) approximately \$450,000 owing to various vendors, including parts suppliers, mechanics, logistics and service providers and other suppliers.

#### **E. JC Canada PPSA Searches**

59. I am advised by Andrea Lockhart of Osler and believe that lien searches were conducted on or about July 15, 2019 against each member of the JC Canada Group under the *Personal Property Security Act* (or equivalent legislation) in all the Canadian provinces and territories (collectively, the “PPSA Searches”). I have been further advised by Ms. Lockhart and believe that the PPSA Searches indicate, among other things, that Wells Fargo, as Agent, for and on behalf of the prepetition ABL Facility lenders, registered a security interest against all of the assets of the JC Canada Group in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, and Saskatchewan and against all of the assets of JC Canada in Quebec. De Lage Landen Financial Services Canada Inc. has filed registrations against JC Canada in Alberta, Manitoba, Nova Scotia, Quebec and Saskatchewan in respect of certain photocopiers. In addition, there are two garage keepers’ liens registered by Integrated Distribution Systems LP o/a Wajax Equipment in the aggregate amount of Cdn\$67,541,22. Lastly, the PPSA Searches reveal that there are certain truck and trailer leases registered in Quebec by Jack Cooper Transport Company, Inc. and Banc of America Leasing & Capital, LLC in respect of JC Canada.

#### **IV. RECENT EVENTS**

60. The Chapter 11 Debtors’ need to restructure is primarily driven by declining revenues over the past several years, unsustainable obligations related to legacy liabilities from certain multiemployer pension plans and collective bargaining agreements in the United States that various of the U.S. Chapter 11 Debtors are party to, and a capital structure that can no longer be sustained in the face of these challenges.

61. Since 2016, the Chapter 11 Debtors' revenue has declined sharply year over year, both as a result of its cost structure and from overall industry dynamics. From 2016 to 2018, the Chapter 11 Debtors' revenues declined by 12.3%, from \$612.5 million to \$537.3 million, and the unit volumes shipped declined by 16.9%, from approximately 3.067 million units to approximately 2.526 million units, in each case primarily due to business lost to non-union competitors. The Chapter 11 Debtors expect further revenue and unit volume declines in 2019.

62. The Chapter 11 Debtors' overall health is also linked to that of the automobile industry generally, which has experienced flat to declining demand for new automobiles. For example, U.S. light vehicle sales are expected to decrease by approximately 7.5%, from 17.3 million in 2018 to approximately 16 million in 2021, and to remain at this level through 2024. Light vehicle sales fell 2.3% year over year in the first quarter of 2019 alone due, in part, to reduced consumer affordability from higher borrowing costs and lower tax-return amounts.

63. The Chapter 11 Debtors' declining performance has also been exacerbated by increasing repair and maintenance costs, as much-needed capital expenditures on its aging rig fleet have been deferred. The Chapter 11 Debtors operate a truck fleet with an average age of over 14 years, and limited remaining useful life based on historical data and performance, and has lacked the financial wherewithal to invest in new equipment and major fleet refurbishments. As a result, from 2016 to 2018, repair and maintenance costs have increased by 19%.

64. In addition, for the years ended December 31, 2018 and 2017, the Chapter 11 Debtors contributed \$29.5 million and \$30.6 million, respectively, to the Central States, Southeast and Southwest Areas Pension Fund (the "CSPF"), the largest multi-employer pension plan in which certain of the Chapter 11 Debtors participate in the United States. The Chapter 11 Debtors

cannot afford to continue making contributions at these levels. The Chapter 11 Debtors also contribute to other multiemployer pension plans in the U.S.

65. The Chapter 11 Debtors engaged in prior restructuring transactions in 2016 and 2017<sup>4</sup> in an effort to delever and bring their capital structure in line with revenues. In addition, the Chapter 11 Debtors reduced its non-unionized workforce in 2019. Unfortunately, the market continued to deteriorate and the deleveraging from the prior transactions proved insufficient. The Chapter 11 Debtors' unsustainable pension obligations and work rules that limit their ability to respond to customer requirements have made it difficult for the Chapter 11 Debtors to compete with the increasing number of lower-cost, non-unionized companies that have entered the carhaul industry over the past few decades.

## **V. RESTRUCTURING EFFORTS AND PATH FORWARD**

66. The Cerberus Senior Secured Term Loan includes a financial covenant that provides for a first-lien leverage ratio that steps up each quarter. On March 31, 2019, the Chapter 11 Debtors received a notice of default and reservation of rights letter from Cerberus for alleged non-compliance with the financial covenant.

67. Moreover, the Chapter 11 Debtors' auditors issued a going concern qualification at the end of their 2018 reporting period. This resulted in a default under the ABL Facility, and on April 15, 2019, the Chapter 11 Debtors and the lenders under the ABL Facility entered into a waiver of this default. Furthermore, on June 30, 2019, the Chapter 11 Debtors determined they did not have the liquidity necessary to make a principal payment due under the Cerberus Senior

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<sup>4</sup> See paragraphs 48 to 50 of the First Day Declaration for further details regarding the Chapter 11 Debtors' prior restructuring transactions in 2016 and 2017.

Secured Term Loan, which required the Chapter 11 Debtors to obtain a forbearance from Cerberus (as agent on behalf on all lenders to the Cerberus Senior Secured Term Loan) to permit the Chapter 11 Debtors to continue pursuing restructuring discussions with the Junior Term Loan Lenders, Cerberus, CSPF (as defined below), and Wells Fargo (discussed further below).

68. Finally, in July 2019, the Chapter 11 Debtors' liquidity levels dipped below the cash dominion threshold of \$8.5 million required under the ABL Facility, causing Wells Fargo to implement cash dominion procedures, which caused the Chapter 11 Debtors' receipts to immediately be used to pay down outstanding obligations under the ABL Facility.

69. With numerous existing defaults, debt service obligations under the ABL Facility, the Cerberus Senior Secured Term Loan, the 1.5 Lien Term Loan, and the Second Lien Term Loan in excess of approximately \$13 million within the next six (6) months, complete reliance on the ABL Facility to fund day-to-day operations, and no ability to obtain bridge financing or otherwise refinance the ABL Facility or the Junior Term Loans, the Chapter 11 Debtors do not have the ability to continue operating as a going concern absent Chapter 11 relief.

70. Accordingly, in April 2019, the Chapter 11 Debtors initially engaged Wells Fargo, Cerberus and the Junior Term Loan Lenders regarding the Chapter 11 Debtors' strategic alternatives and potential transaction structures. The Chapter 11 Debtors determined that building consensus to implement a pre-negotiated transaction would require the Junior Term Loan Lenders to equitize the Junior Term Loans through a credit bid for the Chapter 11 Debtors' assets.

71. The Junior Term Loan Lenders concurred with the Chapter 11 Debtors' assessment that a viable restructuring transaction (a) would require substantial deleveraging, reduction in pension contributions, and other pension and labour contract modifications, and (b) should be

pursued consensually with all parties on a prepetition basis to the maximum extent possible to minimize the risk of disruption to the Chapter 11 Debtors' businesses.

72. The Chapter 11 Debtors also needed to obtain the support of Wells Fargo and Cerberus to provide liquidity and modify their respective debt documents to enable the Chapter 11 Debtors to restructure and to execute on their business plan.

73. After extensive negotiations beginning in April 2019, Cerberus, Wells Fargo and the Junior Term Loan Lenders indicated that they would support a transaction involving a sale pursuant to section 363 of the U.S. Bankruptcy Code (the "**Section 363 Sale**") of all or substantially all of the Chapter 11 Debtors' assets to a newly formed entity to carry on the Chapter 11 Debtors' business ("**New Jack Cooper**"). The Chapter 11 Debtors concurrently commenced extensive negotiations with CSPF and other U.S. pension funds, to reach agreement on certain forms of pension relief and work rule modifications. The Chapter 11 Debtors also engaged with union leadership in the United States regarding proposed modifications to the CBAs.

74. The ongoing negotiations between the Chapter 11 Debtors, Cerberus, and the Junior Term Loan Lenders culminated in an agreement being reached to effect a transaction that would result in a going-concern sale of substantially all of the Chapter 11 Debtors' assets to a newly formed entity formed by or on behalf of an investment vehicle affiliated with the Junior Term Loan Lenders (the "**Stalking Horse Bidder**") pursuant to a credit bid under section 363(b) of the Bankruptcy Code, subject to higher or better offers. More specifically:

- (a) The Stalking Horse Bidder will credit bid its claims under the 1.5 Lien Term Loan, the Second Lien Term Loan and the DIP Term Loan (as defined below) as consideration for the Section 363 Sale;

- (b) Upon consummation of the Section 363 Sale, the Stalking Horse Bidder, or an affiliate thereof, will provide New Jack Cooper a liquidity infusion in an amount to ensure that New Jack Cooper has a minimum of \$20 million in liquidity as of the date of closing;
- (c) Cerberus will waive amortization payments on the Cerberus Senior Secured Term Loan, not seek payment of default rate interest during the Chapter 11 Cases, consent to the credit bid by the Stalking Horse Bidder and agree to the Stalking Horse Bidder's assumption of the Cerberus Senior Secured Term Loan with modifications to the financial covenants and other terms to enable the Stalking Horse Bidder to implement its business plan; and
- (d) Upon consummation of a sale transaction, the Stalking Horse Bidder will have a minimum of \$20 million in liquidity as of the date of closing.

75. The terms of the restructuring are set forth in a Restructuring Support Agreement dated August 6, 2019 (the "**RSA**"), a copy of which is attached hereto as **Exhibit "D"** (including Exhibit A thereto but excluding all other exhibits), executed by the Chapter 11 Debtors, holders of claims under the Cerberus Senior Secured Term Loan, holders of claims under the 1.5 Lien Term Loan and holders of claims under the Second Lien Term Loan. The RSA is the culmination of months of long, hard-fought, arm's length negotiations to gain support for a pre-negotiated restructuring that is intended to streamline the Chapter 11 process and have as little impact as possible on the Chapter 11 Debtors' operations and businesses.

76. As described in more detail below, the RSA contemplates that the Junior Term Loan Lenders will provide a new money junior secured \$15 million multi-draw term loan debtor-in-possession financing facility to the JCV (as defined below, the "**DIP Term Facility**") that will

be credit bid in connection with the sale transaction. In addition, Wells Fargo will provide a senior secured superpriority asset based revolving lending facility with commitments of up to \$85 million (as defined below, the “**DIP ABL Facility**” and, together with the DIP Term Loan, the “**DIP Facilities**”). Without the DIP Facilities, the Chapter 11 Debtors would not be able to sustain operations and effectuate a restructuring. The proposed DIP Facilities will provide critical liquidity necessary to, among other things, operate the business in the ordinary course and administer the Chapter 11 Cases.

77. Importantly, pursuant to the RSA, the Chapter 11 Debtors will market and seek Court approval of the Section 363 Sale through a thorough marketing process to ensure that the Section 363 Sale is open to all bidders and that the Chapter 11 Debtors receive the highest or otherwise best offer for their assets. JCV will seek to recognize and give effect to any Order granted in the Chapter 11 Cases approving the Section 363 Sale by the CCAA Court and to vest the acquired assets of the JC Canada Group free and clear of all encumbrances (apart from permitted encumbrances). The Chapter 11 Debtors believe that the RSA, the Section 363 Sale and the post-petition marketing process will maximize value for the Chapter 11 Debtors’ estates, maintain the Chapter 11 Debtors as a viable going-concern, preserve jobs for the Chapter 11 Debtors’ employees, and put the New Jack Cooper in a position to execute on its business plan, reinvest in the business to upgrade its fleet, and pursue future growth opportunities.

78. To ensure the least disruption to operations and to minimize the cost of the Chapter 11 Cases, the Chapter 11 Debtors and their stakeholders have agreed upon an expedited timeline to effectuate their restructuring. The proposed timeline is as follows, subject to U.S. Court availability and approval of the final DIP Motion:

Deadline	Proposed Date and Time
Final DIP Order and Bidding Procedures Order (U.S. Court)	No later than 25 days after Petition Date
Final DIP Recognition Order and Bidding Procedures Recognition Order (CCAA Court)	No later than 5 days after entry by U.S. Court of Final DIP Order and Bidding Procedures Order
Entry of Order approving the definitive documentation with CSPF (U.S. Court)	No later than September 23, 2019
Sale Order (U.S. Court)	No later than 65 days after Petition Date
Sale Recognition Order (CCAA Court)	No later than 5 days after entry by U.S. Court of Sale Order
Closing Date of Sale	No later than 75 days after Petition Date

## VI. URGENT NEED FOR RELIEF IN CANADA

79. The JC Canada Group and the other Chapter 11 Debtors are in urgent need of a stay of proceedings and the recognition of the First Day Orders. Since March 2019, the Chapter 11 Debtors have been unable to comply with the covenants in their funded debt documents, defaulting under the terms of both the ABL Facility and the Cerberus Senior Secured Term Loan. The Chapter 11 Debtors have entered “cash dominion” under the terms of the ABL Facility. Their liquidity situation has become dire. As of the Petition Date, the Chapter 11 Debtors had total remaining cash of approximately \$2 million and total remaining liquidity (when factoring in availability under the ABL Facility) of only approximately \$4.5 million.

80. While the Chapter 11 Debtors have thus far largely been able to maintain all transport segment deliveries and asset light services to their customers (and thus the continued trust of their customers) notwithstanding their liquidity challenges, the Chapter 11 Debtors cannot sustain normal course operations without an immediate infusion of post-petition financing and

access to the DIP Facilities. Any harm to the trust and goodwill between the JC Group and Glovis or their significant customers (GM, Ford and Toyota which collectively accounted for the vast majority of total revenues) could harm the JC Group in a manner which would be difficult, if not impossible, to recover from, and which could undermine the continued viability of the JC Group.

81. The ability of the JC Canada Group to sustain normal operations is entirely tied up with, and dependant on, the ability of the U.S. Chapter 11 Debtors to continue operating. As discussed above, the JC Canada Group is not profitable on a standalone basis. The JC Canada Group only remains cash flow positive because the U.S. Chapter 11 Debtors provide all back office and overhead services to the JC Canada Group and pay certain third party expenses on their behalf. The JC Canada Group owes intercompany debts of almost \$17 million to their U.S. affiliates as of June 30, 2019.

82. Furthermore, it is a condition precedent to each of the DIP ABL Facility and the DIP Term Facility that the proposed Initial Order and Supplemental Order of the CCAA Court, *inter alia* recognizing the Chapter 11 Cases as foreign main proceedings and giving effect to the Interim DIP Order, are issued and entered. As the Chapter 11 Debtors need immediate access to the funds available under the DIP Facilities, it is critical that JCV obtain recognition of the First Day Orders (including the Interim DIP Order) as soon as possible to permit the Chapter 11 Debtors to access the liquidity necessary for them to continue as a going concern and to implement the Section 363 Sale and the post-petition marketing process.

83. If the restructuring is implemented, it is anticipated that the JC Group, including the JC Canada Group, will continue as a going concern, resulting in, among other things, the continued employment of approximately 181 Canadian employees and Owner/Operators. In

addition, it is anticipated that trade creditors, customers, landlords and other third party stakeholders will benefit from the continued operation of the JC Canada Group's business.

84. If, however, the restructuring is not implemented, a liquidation of the business and assets of the Chapter 11 Debtors, including the JC Canada Group, will be the likely result. As detailed in the liquidation scenario prepared by the proposed Information Officer (discussed further below), in a liquidation scenario, the JC Canada Group's unsecured creditors are likely to suffer a substantial shortfall in the recoveries on their claims. The book value of the JC Canada Group's current assets is not reflective of the realizable value of its assets in a liquidation scenario. In addition, the JC Canada Group currently has liabilities of approximately \$18.4 million (as of June 30) and a large number of additional "off balance sheet" liabilities would arise if the JC Canada Group were to cease operations and liquidate, including claims in respect of lease terminations, breach of contract, and termination and severance pay for the JC Group's employees.

85. In light of the foregoing, a going concern outcome is in the best interests of the JC Canada Group and all of its stakeholders. A going concern outcome is only available if the relief sought is granted. The proposed DIP Facilities and the Section 363 Sale are supported by the prepetition ABL Facility lenders, the existing main secured creditor with an economic interest in the JC Canada Group.

## **VII. RELIEF SOUGHT**

### **A. Recognition of Foreign Main Proceedings**

86. JC Canada seeks recognition of the Chapter 11 Cases as "foreign main proceedings" pursuant to Part IV of the CCAA. Other than the JC Canada Group, all of the remaining Chapter 11 Debtors are incorporated or formed under U.S. law, have their registered

head offices and corporate headquarters in the U.S., carry out their business in the U.S. and have all, or substantially all, of their assets located in the U.S. While the JC Canada Group provides transport segment services to customers of the JC Group throughout Canada, only minimal administrative functions are carried out in Canada. The JC Canada Group is, for all intents and purposes, administered and managed out of the U.S.

87. As described above, the JC Canada Group is managed on a consolidated basis and its Canadian operations are dependent on and integrated with the U.S. operations. The JC Canada Group would not be able to function independently without the corporate functions performed by the Chapter 11 Debtors in the U.S.

## **B. Recognition of First Day Orders**

88. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the voluntary Petitions with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of the Chapter 11 Debtors to proceed with the Chapter 11 Cases and to pursue a restructuring transaction.

89. On August 8, 2019, the U.S. Court granted 14 interim and final orders (the “**First Day Orders**”). One further court date has been scheduled with the U.S. Court to hear certain anticipated “day two” motions.

90. At this time, JC Canada is seeking recognition of the following First Day Orders granted by the U.S. Court:

- (a) *Order (I) Authorizing Jack Cooper Ventures, Inc. to Act as Foreign Representative, and (II) Granting Related Relief* (the “**Foreign Representative Order**”): The

Foreign Representative Order authorizes JCV to act as “authorized foreign representative” in order to seek the relief sought in this Application.

- (b) *Order Directing Joint Administration of Chapter 11 Cases* (the “**Joint Administration Order**”): The Joint Administration Order directs the joint administration of all cases for each of the Chapter 11 Debtors for procedural purposes only.
- (c) *Interim Order (I) Authorizing the Debtors to (A) Continue Using the Cash Management System and (B) Maintain Existing Bank Accounts and Business Forms, (II) Authorizing Continued Intercompany Transactions, (III) Granting Administrative Expense Status to Intercompany Claims, and (IV) Granting Related Relief* (the “**Interim Cash Management Order**”): The Interim Cash Management Order authorizes: (i) continued use of the Cash Management System, including all bank accounts maintained by the Chapter 11 Debtors; (ii) honouring prepetition obligations related to the use of the Cash Management System, and (iii) authorizing continued intercompany funding through the Cash Management System and granting administrative expense status to all post petition intercompany claims among the Chapter 11 Debtors. The five bank accounts of the JC Canada Group, including the 3 Canadian Scotiabank accounts, form part of the larger Cash Management System. The JC Canada Group is dependant on the continued operating of the Cash Management System for management of its accounts receivables and payable, all data processing and payroll, and all tracking and reconciliation of intercompany transactions.

- (d) *Interim Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors, Foreign Vendors, and 503(b)(9) Claimants and (II) Granting Related Relief* (the “**Critical Vendor Order**”): The Critical Vendor Order authorizes the Chapter 11 Debtors to pay certain prepetition claims in an amount not exceeding \$6.2 million to critical vendors, foreign vendors, and logistics claimants. The JC Canada Group relies wholly on the JC Group’s purchasing department in Kansas City to secure all supplies required by the JC Canada Group in its operations. It is critical that the JC Group continues to pay certain prepetition claims of critical vendors, foreign vendors, and logistics claimants, so that the JC Canada Group can access required supplies, including fuel, tires and parts, for its continued operation.
- (e) *Interim Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Use of Cash Collateral, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Scheduling a Final Hearing; and (B) Granting Related Relief* (the “**Interim DIP Order**”): The Interim DIP Order is described below.
- (f) *Interim Order Authorizing the Debtors to (I) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related thereto, (II) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (III) Honor the Terms of the Premium Financing Agreements and Pay Premiums thereunder, (Iv) Enter into New Premium Financing Agreements in the Ordinary Course of Business, and (V) Granting Related Relief* (the “**Interim Insurance Order**”): The Interim Insurance Order authorizes the Chapter 11 Debtors to continue insurance policies

and agreements relating thereto, to renew, amend, supplement, extend or purchase insurance coverage in the ordinary course of business, and to honor certain prepetition obligations in respect thereof. The JC Canada Group holds the following four (4) insurance policies: (i) automobile liability, Owner/Operator damage liability and cargo liability insurance with Northbridge Insurance Company; (ii) general liability, property, business income, crime, garage auto, and cybersecurity insurance with Northbridge Insurance Company; (iii) umbrella insurance with Lloyds of London (Markel); and (iv) environment – storage tank insurance with Zurich Insurance Company.

- (g) *Interim Order Authorizing the Debtors to (I) Pay Certain Prepetition Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (II) Continue Employee Benefits (“Interim Wages Order”)*: The Interim Wages Order authorizes, but does not direct, the Chapter 11 Debtors, in accordance with their stated policies, collective bargaining agreements, and in the ordinary course of business, to pay prepetition wages, salaries, other compensation, and reimbursable employee expenses, to continue the employee benefits programs in the ordinary course, and granting such other related relief as described in the Wages Motion. The JC Canada Groups employs approximately 181 employees and Owner/Operators which perform a variety of critical function for the JC Canada Group. The Interim Wages Order authorizes the payment of, among other things, all prepetition amounts owing to the JC Canada Group’s employees and Owner/Operators.

- (h) *Interim Order Authorizing (I) the Debtors to Continue and Renew the Surety Bond Program and (II) Granting Related Relief* (the “**Interim Surety Bond Order**”): The Interim Surety Bond Order authorizes the Chapter 11 Debtors to maintain, continue and renew, in their sole discretion, all surety bonds provided by the Chapter 11 Debtors to third parties to secure the Chapter 11 Debtors’ payment or performance of certain obligations, including the maintenance of collateral and satisfaction of all required payments due on the surety bonds. As it applies to the JC Canada Group, Aon Reed Stenhouse Inc., on behalf of JC Canada and GP2, separately, has issued two separate Cdn\$25,000 bonds to secure amounts owing to the Canada Border Services Agency.
- (i) *Interim Order Authorizing the Payment of Certain Prepetition Taxes and Fees* (the “**Interim Taxes Order**”): The Interim Taxes Order authorizes the Chapter 11 Debtors to remit and pay all sales, use, excise, income, franchise, property, and other taxes and fees accrued prior to the Petition Date and that will become payable during the pendency of the Chapter 11 Cases. As at the Petition Date, the JC Canada Group owes: (i) property taxes of \$30,357.45 for the Winnipeg Property, (ii) GST/HST in the approximate sum of \$49,276.73 (with further monthly sums becoming due and payable on the last day of each month), and (iii) withholding taxes of approximately \$23,147.38 (with further monthly sums becoming due and payable on the 15<sup>th</sup> day of each month).
- (j) *Interim Order Determining Adequate Assurance of Payment for Future Utility Services* (the “**Interim Utilities Order**”): The Interim Utilities Order states that the Proposed Adequate Assurance (as defined in the Utilities Motion) provides the

Utility Providers (as defined in the Utilities Motion) with adequate assurance of payment within the meaning of section 366 of the *United States Bankruptcy Code*, prohibiting the Utility Providers from altering, refusing, or discontinuing services, and approving procedures for resolving any dispute concerning adequate assurance in the event that a Utility Provider is not satisfied with the Proposed Adequate Assurance. In connection with the operation of the JC Canada Group's businesses and management of its terminals, the JC Canada Group obtains electricity, telephone, internet, cable, recycling, and other similar services from a number of utility companies or brokers, including from those listed at Exhibit B to the Utilities Motion.

- (k) *Interim Order (I) Authorizing the Debtors to Maintain and Continue Customer Programs and Honor Certain Prepetition Obligations Relating Thereto, and (II) Granting Related Relief* (the “**Interim Customer Programs Order**”): The Interim Customers Program Order authorizes the Chapter 11 Debtors to honour prepetition claims arising under customer programs, including (i) liability for damages to cargo while in the Chapter 11 Debtors' possession, and (ii) reimbursable obligations with respect to services the Chapter 11 Debtors provide on their terminals and lots, and authorizes the Chapter 11 Debtors to continue such customer programs in the ordinary course of business. A portion of the JC Canada Group's accrued accounts payable as at the Petition Date includes amounts owed to their customers under their customer programs, which amounts will be paid pursuant to the Interim Customer Programs Order.

- (l) *Debtors' Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* (the "**Equity Transfer Order**"): The Equity Transfer Motion approves certain notification and hearing procedures related to certain transfers of Jack Cooper Investments, Inc.'s existing common stock and warrants to acquire common stock or any beneficial ownership thereof, as detailed in Exhibit 1 to the Interim Order (the "**Equity Transfer Procedures**"); and (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to, common stock in violation of the Procedures shall be null and void *ab initio*. While the Chapter 11 Debtors are not aware of any Canadian warrant holders of Jack Cooper Investments, Inc., the Chapter 11 Debtors seek recognition of the Equity Transfer Order out of an abundance of caution so that any Canadian warrant holders, to the extent such warrant holders exist, will be bound by the Equity Transfer Procedures.
- (m) *Order Authorizing Retention and Appointing of Prime Clerk LLC as Claims, Noticing and Solicitation Agent* (the "**Prime Clerk Retention Order**"): The Prime Clerk Retention Order appoints Prime Clerk LLC as claims, noticing and solicitation agent in the Chapter 11 Cases *nunc pro tunc* to the Petition Date, including in respect of creditors of the JC Canada Group.

**C. Interim DIP Order**

91. The Interim DIP Order, among other things:

- (a) authorizes:

- (i) JCV, as parent, Jack Cooper Holdings Corp., and certain subsidiaries as borrowers (discussed further below) to obtain post-petition financing pursuant to a senior secured super-priority asset-based revolving credit facility (the “**DIP ABL Facility**”) with Wells Fargo, as lead arranger, sole bookrunner and administrative agent (the “**DIP ABL Agent**”), on behalf of the lenders party thereto (the “**DIP ABL Lenders**”), in an aggregate principal amount of up to \$85 million, comprised of: (i) commitments available for borrowings by the U.S. Borrowers (as defined below) of up to \$80 million; and (ii) commitments available for borrowings by the Canadian Borrowers (as defined below) of up to \$5 million (the “**DIP ABL Credit Agreement**”); and
  - (ii) JCV to obtain post-petition financing pursuant to a junior secured super-priority multi-draw term loan credit facility (the “**DIP Term Facility**” and together with the DIP ABL Facility, the “**DIP Facilities**”) with Wilmington Trust, National Association, as administrative agent (the “**DIP Term Agent**” and together with the DIP ABL Agent, the “**DIP Agents**”), on behalf of the lenders party thereto (the “**DIP Term Lenders**” and together with the DIP ABL Lenders, the “**DIP Lenders**”), in an aggregate principal amount of up to \$15 million (the “**DIP Term Credit Agreement**” and together with the DIP ABL Credit Agreement, the “**DIP Credit Agreements**”).
- (b) authorizes the Chapter 11 Debtors to execute, deliver and enter into the DIP Credit Agreements, together with any other related agreements, documents, security

agreements, or pledge agreements required under the DIP Credit Agreements (collectively, the “**DIP Loan Documents**”), and to perform their obligations thereunder;

- (c) authorizes the Chapter 11 Debtors to pay all amounts, obligations, and liabilities owing or payable to the DIP Lenders pursuant to the DIP Loan Documents, including, without limitation, any principal, interest, fees, commitment fees, administrative agent fees, audit fees, closing fees, service fees, facility fees, or other fees, costs, expenses, charges, disbursements, any obligations in respect of indemnity claims, whether contingent or absolute, including, without limitation, any and all obligations in connection with any interest rate, currency swap, or other hedging agreement or arrangement, in each case, to the extent constituting all Chapter 11 Debtor and/or Guarantor (as defined below) obligations of any kind under the DIP Loan Documents (such obligations as to the DIP ABL Facility, the “**DIP ABL Obligations,**” and such obligations as to the DIP Term Facility, the “**DIP Term Obligations,**” and, collectively, the “**DIP Obligations**”);
- (d) authorizes the Chapter 11 Debtors to use proceeds of the DIP Facilities as permitted under the DIP Loan Documents and the Interim DIP Order; and
- (e) grants the DIP Lenders valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below), including, without limitation, all property constituting Prepetition Collateral (as defined below), to secure the DIP Obligations.

92. Full details of the DIP Facilities are provided in the DIP Motion filed by the Chapter 11 Debtors in respect of the Interim DIP Order and are not repeated herein. An overview of the DIP Facilities is as follows:

(a) DIP ABL Facility

- (i) *Borrowers*: Jack Cooper Holdings Corp., Jack Cooper Transport, Pacific Motor, Auto Handling Corporation, Jack Cooper Logistics, Axis Logistic Services, Jack Cooper Rail & Shuttle, Jack Cooper CT Services (collectively, the “**U.S. Borrowers**”), JC Canada, LP1 and LP 2 (collectively, the “**Canadian Borrowers**” and together with the U.S. Borrowers, the “**Borrowers**”).
- (ii) *Canadian Guarantors*: GP1, GP2, the U.S. Borrowers and the U.S. Guarantors (as defined below) (the “**Canadian Guarantors**”).
- (iii) *U.S. Guarantors*: each domestic subsidiary of JVC (other than the U.S. Borrowers) (the “**U.S. Guarantors**”).
- (iv) *Amount*: an aggregate principal amount of up to \$85 million, comprised of:
  - (i) commitments available for borrowings by the US. Borrowers of up to \$80 million; and
  - (ii) commitments available for borrowings by the Canadian Borrowers of up to \$5 million (the “**Canadian DIP Sub-Facility**”).
- (v) *Repayment of Existing Secured Obligations*: Upon the entry of the Interim DIP Order, the Borrowers shall borrow loans in an amount sufficient to repay all outstanding principal, accrued interest, accrued fees and expenses, and any other indebtedness and amounts owing under the ABL Facility.

- (vi) *Liability*: Each Borrower is jointly and severally liable for all obligations arising under the DIP ABL Facility.
  
- (vii) *Security*: Obligations under the DIP ABL Facility are secured: (i) on a first-priority basis by liens on substantially all of the collateral of the Borrowers, Canadian Guarantors, and U.S Guarantors, including accounts receivable, inventory, all instruments, chattel paper, documents of title, all guarantees, letters of credit, security and other enhancements, all claims and causes of action (including commercial tort claims) to the extent relating to any of the accounts receivable constituting DIP ABL Priority Collateral or inventory, all deposit accounts or securities accounts (subject to various exclusion), tax refunds, all assets of JC Canada Group (the “**DIP ABL Priority Collateral**”); and (ii) on a junior priority basis by liens on pledged stock, defined real estate assets, including all fixtured therein, all equipment, including vehicles, all intellectual property, general intangibles, instruments, documents, chattel paper, documents of title, letters-of-credit rights, books and records, goods and supporting obligations related to the foregoing and proceeds (except to the extent any of the foregoing constitute ABL Priority Collateral) (the “**DIP Term Priority Collateral**” and, together with the DIP ABL Priority Collateral, the “**DIP Collateral**”);
  
- (viii) *Guarantees*: Obligations under the DIP ABL Facility are guaranteed by the Canadian Guarantors pursuant to a Canadian Guarantee (Debtor-In-Possession) Agreement, and by the U.S. Guarantors pursuant to a Guarantee

(Debtor-In-Possession) Agreement, both to be signed and dated concurrently with the DIP Credit Agreements.

(ix) *Exit Plan:* Upon closing of the Section 363 Sale, the obligations outstanding under the DIP ABL Credit Agreement shall be modified and assumed (or refinanced) by the purchaser (or an affiliate thereof) in the form of an exit revolving credit facility (the “**ABL Exit Facility**”), by and among the purchaser (or an affiliate thereof), as borrower, and all lenders thereto on terms substantially consistent with the existing ABL Facility.

(b) DIP Term Facility:

(i) *Borrowers:* JCV.

(ii) *Guarantors:* All Chapter 11 Debtors, including the JC Canada Group.

(iii) *Amount:* An aggregate principal amount of up to \$15 million.

(iv) *Credit Bid:* The principal amount outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the DIP Term Facility shall be credit bid as part of the purchase price within the Section 363 Sale.

(v) *Liability:* All of the Chapter 11 Debtors, including the JC Canada Group, are jointly and severally liable for the obligations arising under the DIP Term Facility.

- (vi) *Security*: Obligations under the DIP Term Facility are secured (i) on a senior priority basis by liens on the Term Loan Priority Collateral, and (ii) on a junior priority basis by liens on the ABL Priority Collateral.
- (vii) *Guarantees*: Obligations under the DIP Term Facility are guaranteed by all of the Chapter 11 Debtors, including the JC Canada Group.
- (viii) *Exit Plan*: Upon closing of the Section 363 Sale:
  - (A) all obligations outstanding under the Cerberus Senior Secured Term Loan, including not less than \$188,650,000 in principal amount outstanding, shall be modified and assumed by the purchaser (or an affiliate thereof) in the form of an exit first lien term loan facility;
  - (B) all obligations outstanding under the 1.5 Lien Term Loan, including approximately \$45,515,729 in principal amount outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the 1.5 Lien Term Loan, shall be credit bid as part of the purchase price within the Section 363 Sale and all obligations under the 1.5 Lien Term Loan shall be deemed fully satisfied; and
  - (C) all obligations outstanding under the Second Lien Term Loan, including approximately \$291 million outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the Second Lien Term Loan shall be credit bid in the amount of \$241,413,174 as part of the purchase price within the

Section 363 Sale. To the extent that a portion of the obligations under the Second Lien Term Loan is not credit bid in connection with the Section 363 Sale, such amount shall constitute a general unsecured claim against the Chapter 11 Debtors' estates.

93. The amount actually borrowed by the Chapter 11 Debtors under the DIP ABL Facility and the DIP Term Facility is proposed to be secured by, among other things, Court-ordered charges on the JC Canada Group's property (in respect of the DIP ABL Facility, the "**DIP ABL Charge**", in respect of the DIP Term Facility, the "**DIP Term Charge**", and together, the "**DIP Charges**"), that rank in priority to all unsecured claims, but are subordinate to the proposed Administration Charge, with the DIP ABL Charge ranking in priority to the DIP Term Charge.

94. Immediate access to incremental liquidity pursuant to the DIP Facilities is critical to preserving the value of the Chapter 11 Debtors' estate (including the JC Canada Group's estate) and maximizing the likelihood of a going-concern restructuring. The Chapter 11 Debtors do not have sufficient liquidity, including cash collateral, to operate their businesses in the ordinary course of business without the financing provided pursuant to the DIP Facilities. The Chapter 11 Debtors' ability to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, pay certain fees and expenses as set forth herein, and to otherwise fund their operations is essential to the Chapter 11 Debtors' continued viability as the Chapter 11 Debtors seek to maximize the value of the assets of the estates for the benefit of all creditors. As discussed above, the ability of the JC Canada Group to sustain normal operations is entirely tied up with, and dependant on, the ability of the U.S. Chapter 11 Debtors to continue operating.

95. Critically, as it pertains to the JC Canada Group, the DIP Lenders, including the DIP Term Lenders, indicated to the Chapter 11 Debtors that they are unwilling to make the DIP

Facilities available to *any* of the Chapter 11 Debtors unless the JC Canada Group is jointly and severally liable for all of the outstanding obligations under the DIP ABL Facility and guarantees all outstanding obligations under the DIP Term Facility (including those incurred by all U.S. Chapter 11 Debtors). In order to mitigate against any material prejudice to the creditors of the JC Canada Group with respect to the security and guarantees provided by the JC Canada Group pursuant to the DIP Facilities, the Interim DIP Order provides that, subject to applicable priorities, the respective DIP Obligations shall be satisfied from the proceeds of DIP Collateral constituting property of those Debtors located in the United States before looking to the Canadian collateral; provided, however, that the foregoing shall not apply to the Canadian DIP Sub-Facility or the Prepetition ABL Canadian Sub-Facility (as defined in the Interim DIP Order).

96. As described further in the DIP Motion, the Chapter 11 Debtors have determined in the exercise of their business judgment, that the terms of the DIP Facilities are reasonable and appropriate in the circumstances. Without immediate access to the DIP Facilities, the Chapter 11 Debtors, including the JC Canada Group on a standalone basis, would be unable to operate their business and maintain business relationships with their vendors, suppliers and customers, pay their employees or otherwise finance their operations, and their ability to preserve and maximize the value of their assets would be irreparably harmed. To survive as a going concern, the JC Canada Group requires the Chapter 11 Debtors in the U.S. to remain a going concern.

97. As discussed above, it is a condition precedent to each of the DIP ABL Facility and the DIP Term Facility that the proposed Initial Order and Supplemental Order of the CCAA Court, *inter alia* recognizing the Chapter 11 Cases as foreign main proceedings and giving effect to the Interim DIP Order, are issued and entered. If the Interim DIP Order is not recognized and given effect by the CCAA Court, the entire restructuring the JC Canada Group will be put in jeopardy.

The continued viability of the JC Canada Group is intertwined with, and dependant on, the continued viability of the U.S. Chapter 11 Debtors. The continued viability of the U.S. Chapter 11 Debtors is dependant access to the funds provided by the DIP Facilities.

### **VIII. APPOINTMENT OF INFORMATION OFFICER**

98. As part of its application, JCV is seeking to appoint Alvarez & Marsal Canada Inc. (“**A&M**”) as the information officer (the “**Information Officer**”) in this proceeding. A&M is a licensed trustee in bankruptcy in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).

99. A&M has consented to acting as Information Officer in this proceeding. A copy of A&M’s consent to act as Information Officer is attached hereto as **Exhibit “E”**.

100. The Chapter 11 Debtors propose to grant counsel to the Canadian Chapter 11 Debtors, the proposed Information Officer and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of Cdn\$500,000 (the “**Administration Charge**”) on the JC Canada Group’s property in Canada. The U.S. Chapter 11 Debtors do not have any assets in Canada apart from the trucks and trailers leased to the JC Canada Group. I believe the amount of the charge to be reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of the proposed Information Officer and its legal counsel.

### **IX. PROPOSED NEXT HEARING**

101. As noted above, JCV, as the Foreign Representative, is seeking recognition of the above noted First Day Orders, including the Interim DIP Order.

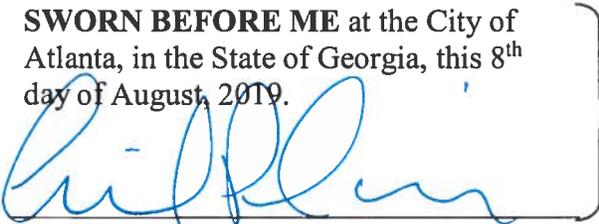
102. JCV intends to seek further hearings for recognition of any corresponding “final orders”, including the Final DIP Order (as defined in the RSA), and any “second day” orders that need to be recognized, if and when entered by the U.S. Court.

**X. NOTICE**

103. This application has been brought on notice to the DIP Lenders and the proposed Information Officer.

104. The information regarding these proceedings will be provided to the JC Group Canada’s stakeholders by and through the Information Officer. If the Orders sought are granted, the Applicant proposes that a notice of the recognition orders be published for two consecutive weeks in *The Globe and Mail* (National Edition) pursuant to the CCAA and all Canadian Court materials in these proceedings will be available on the Information Officer’s website.

**SWORN BEFORE ME** at the City of Atlanta, in the State of Georgia, this 8<sup>th</sup> day of August, 2019.

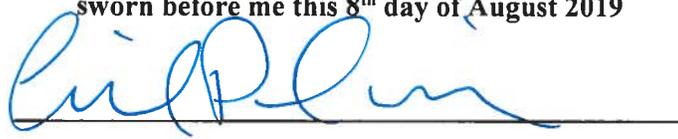


Commissioner for Oaths/Notary Public in  
and for the Province of Alberta



**Greg R. May**

**This is Exhibit "A" to the Affidavit of Greg R. May  
sworn before me this 8<sup>th</sup> day of August 2019**

A handwritten signature in blue ink is written over a solid black horizontal line. The signature is cursive and appears to be 'C. J. P. M.'.

A Commissioner for Oaths/Notary Public in and for the Province of Alberta

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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In re:	)	Chapter 11
JACK COOPER VENTURES, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-62393 (PWB)
Debtors.	)	(Joint Administration Requested)

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**DECLARATION OF GREG MAY, THE DEBTORS’  
CHIEF FINANCIAL OFFICER, IN SUPPORT OF FIRST DAY MOTIONS**

1. My name is Greg R. May, and I am the Chief Financial Officer of Jack Cooper Investments, Inc. (together with its direct and indirect subsidiaries that have filed for chapter 11 relief, the “Debtors,” and together with all of its Debtor and non-Debtor subsidiaries,<sup>2</sup> “Jack Cooper” or the “Company”). On August 6, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing the above-captioned chapter 11 cases (the “Chapter 11 Cases”). Shortly after the commencement of the

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, include: Jack Cooper Ventures, Inc. (0805); Jack Cooper Diversified, LLC (9414); Jack Cooper Enterprises, Inc. (3001); Jack Cooper Holdings Corp. (2446); Jack Cooper Transport Company, Inc. (3030); Auto Handling Corporation (4011); CTEMS, LLC (7725); Jack Cooper Logistics, LLC (3433); Auto & Boat Relocation Services, LLC (9095); Axis Logistic Services, Inc. (2904); Jack Cooper CT Services, Inc. (3523); Jack Cooper Rail and Shuttle, Inc. (7801); Jack Cooper Investments, Inc. (6894); North American Auto Transportation Corp. (8293); Jack Cooper Transport Canada Inc. (8666); Jack Cooper Canada GP 1 Inc. (7030); Jack Cooper Canada GP 2 Inc. (2373); Jack Cooper Canada 1 Limited Partnership (3439); and Jack Cooper Canada 2 Limited Partnership (7839). The location of the Debtors’ corporate headquarters and service address is: 630 Kennesaw Due West Road NW, Kennesaw, Georgia 30152.

<sup>2</sup> The Company’s Mexican subsidiaries and JCSV Dutch Cöoperatief U.A. (a Dutch entity) are not Debtors and have not filed or commenced any insolvency or restructuring proceedings, either in the U.S. or elsewhere.

Chapter 11 Cases, the Debtors' Canadian entities will seek ancillary relief in Canada under Part IV of the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 (as amended, the "CCAA"). Attached hereto as Exhibit A is the Debtors' corporate structure chart that identifies the Debtors, the non-Debtor Mexican subsidiaries ("Jack Cooper Mexico"), and the non-Debtor Dutch subsidiary ("JCSV").<sup>3</sup>

2. I have served as Chief Financial Officer of the Company since April of 2019. Prior to that, I served as Executive Vice President and Chief Administrative Officer of the Company since February 2017, after spending five years as the Chief Executive Officer of Car Delivery Network. Accordingly, I am very familiar with the day-to-day operations of the Company, its business and financial affairs, and its books and records. Prior to that, I spent 17 years with the Company serving as President from 2005 to 2011 and Chief Financial Officer from 1998 to 2005. Prior to joining the Company in 1994, I worked for 10 years with KPMG serving public company clients in the transportation, banking and manufacturing industries. From 1990 to 1994, I served as Chief Financial Officer of ABC Laboratories, an environmental services company. I received a Bachelor of Science in accountancy from the University of Missouri in 1980. In total, I have over 30 years of experience in the trucking industry in executive roles and as a consultant and CPA to trucking industry clients.

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<sup>3</sup> Attached hereto as Exhibit B is a list of the Debtors and non-Debtor affiliates.

**Preliminary Statement**<sup>4</sup>

3. The Debtors commenced these Chapter 11 Cases to pursue a restructuring process and consummate a value maximizing sale of their business to the highest or otherwise best bidder. The Chapter 11 Cases were commenced only after months of intense and hard-fought negotiations that culminated into an agreement for a pre-negotiated restructuring reflected in that certain Restructuring Support Agreement, dated as of August 6, 2019 (collectively with the schedules and exhibits thereto, the “RSA”) attached hereto as **Exhibit C**. The RSA is intended to streamline the Debtors’ chapter 11 process and minimize any impact on the Debtors’ operations and businesses. As discussed in more detail herein, the RSA contemplates that the Debtors will pursue a value maximizing sale to the Stalking Horse Bidder (as defined below) pursuant to section 363 of the Bankruptcy Code, subject to higher or otherwise better bids consistent with a Court-approved postpetition marketing process (the “Sale Transaction”).

4. It cannot be overstated that filing the Chapter 11 Cases with a pre-negotiated deal among many of the Debtors’ key constituencies involved extensive negotiations and give-and-take on all sides. Through this restructuring, the Debtors seek to (a) implement modifications addressing the Debtors’ pension obligations, (b) obtain ratification of modifications of the Debtors’ CBAs—thereby avoiding a likely costly and protracted litigation with the Teamsters, (c) substantially deleverage the new company’s balance sheet, and (d) provide the new company with adequate liquidity upon consummation of the Sale Transaction to execute on its business plan and pursue future growth opportunities. The broad consensus behind the Debtors’ restructuring was only

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<sup>4</sup> Capitalized terms used in this Preliminary Statement that are not otherwise defined here, shall have the meaning ascribed to such terms later in this declaration.

obtained through the hard work and good faith negotiations with the Debtors' lenders and representatives of other key constituencies to push toward the common goal of maximizing the value of the Debtors' enterprise.

5. Pursuant to the RSA, the Debtors will be seeking consummation of the Sale Transaction consistent with the Milestones (as defined in the RSA), including Court approval of the Sale Transaction by not later than 65 days after the Petition Date. The Debtors believe that this time-frame provides ample time and opportunity for the Debtors to thoroughly test the market for their assets, obtain ratification by the Teamsters' membership and the Machinists' membership of the modified CBAs and satisfy all other conditions precedent to consummation of the Sale Transaction.

6. In furtherance of the Debtors' efforts to implement the transactions contemplated by the RSA, I submit this declaration (the "First Day Declaration") (a) in support of the Debtors' voluntary petitions for relief under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Code"), (b) in support of the Debtors' contemporaneously filed requests for relief as set forth in various motions and applications (the "First Day Motions"), and (c) to assist the Court and other interested parties in understanding the circumstances giving rise to the commencement of the Chapter 11 Cases.

7. Except as otherwise indicated, all facts and information set forth in this First Day Declaration are based upon my personal knowledge, or were supplied to me by other members of the Debtors' management and professionals, learned from my review of relevant documents and discussions with the Debtors' advisors<sup>5</sup> or based upon my experience with, and knowledge of, the

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<sup>5</sup> The Debtors' advisors include Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss") and King & Spalding LLP ("K&S"), as lead restructuring and corporate counsel respectively, Ogletree, Deakins, Nash, Smoak & Stewart,

Debtors' operations, financial condition, and/or the carhaul industry. If called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this First Day Declaration.

8. This First Day Declaration has been organized into five sections. The first section provides an overview of the Debtors and their businesses. The second section describes the Debtors' capital structure. The third section describes the key events leading to the filing of the Chapter 11 Cases. The fourth section describes the Debtors' prepetition restructuring efforts. The fifth section summarizes the relief requested in the First Day Motions.

#### **I. Overview of the Debtors and Their Businesses**

9. Jack Cooper has a rich 90-year history as a leading provider of finished vehicle logistics in North America for both new and used vehicles, as well as a provider of logistical services in select non-automotive markets. The Debtors have evolved from a small vehicle transportation business into a larger, technology-focused, diversified transportation and logistics enterprise with operations across North America. The Debtors' businesses are divided into two segments: a transport segment (the "Transport Segment") and a diversified, asset-light logistics segment (the "Logistics Segment").

10. The Transport Segment delivers finished vehicles from manufacturing plants, vehicle distribution centers, seaports, and railheads to new vehicle dealerships. The Debtors operate a fleet of over 1,600 active rigs and a network of 39 terminals across the United States and Canada to haul

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P.C. ("Ogletree"), as labor counsel, Osler, Hoskin & Harcourt LLP ("Osler"), as Canadian restructuring counsel, Houlihan Lokey, Inc. ("Houlihan"), as investment banker and financial advisor, and AlixPartners LLP, as restructuring advisor ("Alix," and together with Paul, Weiss, K&S, Ogletree, Osler, and Houlihan, the "Company Advisors").

primarily new vehicles, including two-door automobiles, light trucks, sport utility vehicles, and transit vans.

11. The Debtors' customers in the Transport Segment are primarily major domestic and foreign original equipment manufacturers ("OEMs") with automobile production facilities in North America, including General Motors, Ford, Toyota, Fiat Chrysler, Hyundai Motor Company, and Kia Motor Corporation. The Debtors' three largest customers, GM, Ford and Toyota, collectively account for the vast majority of total revenues. The Debtors have developed and maintained long-term relationships with their OEM customers and have historically been successful in negotiating contract renewals. Under written contracts, the Debtors have served GM since 1928, Toyota since 1979, and Ford since 1992. No other customer accounted for more than 10% of the Debtors' operating revenues during 2018.

12. In 2018, the Debtors transported over 2.5 million finished vehicles and generated operating revenue of \$540.7 million relating to the Transport Segment.

13. The Debtors' Logistics Segment provides a wide range of asset-light services to the previously-owned vehicle market, including vehicle inspections, automated claims management, title and key storage services, brokerage and export services, export processing, third-party logistics management, and other technical services. The Debtors also help their customers move vehicles to and from dealerships, inspection lots, and auctions by coordinating transportation by third-party trucking or rail providers. The Logistics Segment's customers include fleet ownership companies, remarketers, dealers, auctioneers, and relocation-management companies. For the year ended December 31, 2018, the Logistics Segment generated operating revenues of approximately \$55.9 million.

14. The Logistics Segment's customers include high-tech companies, vehicle remarketers and large-fleet vehicle owners and managers (including, OEMs, rental car agencies, and automotive leasing and lending financial institutions), individuals and blue-chip companies needing to relocate vehicles (either directly or through a relocation-management company), and automotive dealers.

15. The majority of the Debtors' contracts are awarded as a result of a competitive bidding process. Given the relatively small number of OEMs with significant production facilities in North America, the Debtors' sales and marketing activities are conducted by senior management, who interface directly with customers to maintain existing business and seek to acquire new business.

16. The Debtors have one-year or multi-year contracts in place with the majority of their customers, including multi-year contracts with certain OEMs. The customer contracts generally establish rates for the transportation of vehicles based upon a fixed rate per vehicle transported plus a variable rate for each mile that a vehicle is transported. Certain contracts provide for rate variation per vehicle depending on the size and weight of the vehicle. The Debtors' contracts generally do not contain volume commitments. Instead, the Debtors' customers, during the duration of these contracts, typically specify through a purchase order or advance shipping notice the timing, date, and location of their vehicle transportation requests.

17. As noted above, the Debtors operate in the fiercely competitive carhaul industry, which is a segment of the broader automotive transportation industry. The Debtors' competitors include Cassens Transport Co. ("Cassens"), which is the only other carhaul company with a predominately unionized workforce, and non-union competitors such as Hanson & Adkins Auto Transport, United Road Services, Inc., Moore Transport of Tulsa LLC, Centurion Auto Holding Co.,

and U.S. AutoLogistics. Jack Cooper also competes indirectly with railroads, independent owner-operators, vertically integrated customers, and other providers of related carhaul and logistical services.

## **II. The Debtors' Capital Structure**

18. As of the Petition Date, the Debtors have approximately \$575.4 million in funded debt, consisting of a revolving credit facility and three tranches of term loans.

### **A. Revolving Credit Facility due 2023**

19. On February 15, 2018, the Debtors entered into that certain Second Amended and Restated Credit Agreement (as amended on June 28, 2018 and as further amended, supplemented, or modified from time to time, the "Revolver Credit Agreement," and the facility thereunder, the "Revolving Credit Facility") with Wells Fargo Capital Finance, LLC, as administrative agent ("Wells Fargo"), and the lenders party thereto (collectively, the "Revolver Lenders"). The Debtors use the Revolving Credit Facility primarily for working capital needs, and they generally borrow from and repay the Revolving Credit Facility on a short-term basis. The Revolving Credit Facility has a stated maturity date of February 15, 2023.

20. Obligations under the Revolving Credit Facility are secured on a first-priority basis by validly perfected liens on certain collateral, including accounts receivable, inventory, deposit accounts, and securities accounts (subject to certain limited exclusions), including instruments, chattel paper, guarantees, letters of credit, and claims relating to such accounts receivable (collectively, the "ABL Priority Collateral"). Obligations under the Revolving Credit Facility are also secured on a fourth-priority basis by validly perfected liens on the Term Loan Priority Collateral (as defined and described below).

21. As of the Petition Date, approximately \$49.8 million was outstanding under the Revolving Credit Facility.

**B. The First Lien Term Loan due 2023**

22. On June 28, 2018, the Debtors entered into the Credit Agreement (as amended, supplemented, or modified from time to time, the "First Lien Credit Agreement," and the facility thereunder, the "First Lien Term Loan Facility") with Cerberus Business Finance Agency, LLC ("Cerberus"), as agent, and the lenders party thereto (the "First Lien Term Loan Lenders"), for a \$196 million first lien term loan facility. Obligations under the First Lien Term Loan Facility are secured on (a) a first-priority basis by validly perfected liens on substantially all of the assets of Jack Cooper Ventures, Inc. ("JCV") and its domestic subsidiaries not constituting ABL Priority Collateral (subject to certain customary exclusions), including equity pledges, interests in real property (including fixtures), equipment (including vehicles), intellectual property, pledged debt instruments, deposit accounts and securities accounts, and all intangibles, instruments, chattel paper, letter-of-credit rights and supporting obligations of the foregoing (collectively, the "Term Loan Priority Collateral") and (b) a second-priority basis by validly perfected liens on the ABL Priority Collateral. The First Lien Term Loan Facility has a stated maturity date of June 28, 2023.

23. As of the Petition Date, approximately \$188.7 million was outstanding under the First Lien Term Loan Facility.

**C. 1.5 Lien Term Loan due 2024**

24. On June 28, 2018, the Debtors entered into the Credit Agreement (as amended, supplemented, or modified from time to time, the "1.5 Lien Credit Agreement," and the

facility thereunder, the “1.5 Lien Term Loan Facility”) with Wilmington Trust, National Association (“Wilmington”), as agent for the initial lenders thereunder (the “1.5 Lien Term Loan Lender”) for a \$41 million term loan facility. Obligations under the 1.5 Lien Term Loan Facility are secured on a second-priority basis by validly perfected liens on the Term Loan Priority Collateral and on a third-priority basis by validly perfected liens on the ABL Priority Collateral. The 1.5 Lien Term Loan Facility has a stated maturity date of March 28, 2024.

25. As of the Petition Date, approximately \$45.5 was outstanding under the 1.5 Lien Term Loan Facility.

**D. Second Lien Term Loan due 2024**

26. On May 3, 2018, the Debtors entered into the Credit Agreement (as amended, supplemented, or modified from time to time, the “Second Lien Credit Agreement” and the facility thereunder, the “Second Lien Term Loan Facility”) <sup>6</sup> with Wilmington, as agent for the lenders thereunder (the “Second Lien Term Loan Lender,” and together with the 1.5 Lien Lenders, the “Junior Term Loan Lenders,” and, collectively with the Revolver Lenders, the First Lien Lenders, and the 1.5 Lien Lenders, the “Prepetition Secured Parties”) for a \$261.6 million second lien term loan facility. Obligations under the Second Lien Term Loan Facility are secured on a third-priority basis by validly perfected liens on the Term Loan Priority Collateral and on a fourth-priority basis by

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<sup>6</sup> The Revolving Credit Agreement, the First Lien Credit Agreement, the 1.5 Lien Credit Agreement, the Second Lien Credit Agreement, and any collateral and ancillary documents related to each are collectively referred to herein as the “Prepetition Debt Documents”. The Revolving Credit Facility, the First Lien Term Loan Facility, the 1.5 Lien Term Loan Facility and the Second Lien Term Loan Facility are collectively referred to herein as the “Prepetition Secured Facilities”. The 1.5 Lien Term Loan Facility and the Second Lien Term Loan Facility together are referred to herein as the “Junior Term Loan Facilities” and the documentation governing the Junior Term Loan Facilities is referred to herein as the “Junior Term Loan Documents”.

validly perfected liens on the ABL Priority Collateral. The Second Lien Term Loan Facility has a stated maturity date of July 1, 2024.

27. As of the Petition Date, approximately \$291.4 was outstanding under the Second Lien Term Loan Facility.

### **III. Events Leading to these Chapter 11 Cases**

28. In recent years, the Debtors have faced declining revenues and loss of market share amidst a changing landscape for the carhaul industry nationwide. Moreover, as one of only two unionized carhaul providers in the United States, the Debtors are burdened with substantial labor costs, including pension obligations and work rules that limit the Debtors' ability to respond to customer requirements, making it difficult for them to compete with non-unionized competitors. These challenges have caused the Debtors to face rapidly declining liquidity.

#### **A. Revenue Declines**

29. In the 1980s, trucking deregulation reforms enacted by the federal government paved the way for low-cost, non-unionized competitors to enter the carhaul industry. Additionally, railway companies have captured considerable market share of the "long-haul" segment due to significant cost advantages. These industry shifts facing the unionized carhaul companies have been compounded by the decreasing market share of the "big three" Detroit-based automobile manufacturers (GM, Ford, and Chrysler), which historically maintained strong relationships with the unionized carriers (and Jack Cooper in particular). Combined with the general decline in private-sector unionization, these exogenous forces have dramatically reduced the number of unionized carriers in the fixed vehicle logistics industry from 40 in 1985 to just two in 2019—Cassens and Jack Cooper.

30. Most of the Debtors' competitors do not have a unionized workforce, and the aggregate rig count of non-unionized carriers is almost double that of the two remaining unionized carriers. Competing carriers with non-unionized workforces have both (a) forced the Debtors to cut pricing to compete and (b) otherwise taken business from the Debtors, as the Debtors operate at a 10% to 30% cost disadvantage relative to their non-union competitors.

31. Since 2016, the Company's revenues have sharply declined year over year, both as a result of its cost structure and overall industry dynamics. From 2016 to 2018, Jack Cooper Transport Company, Inc.'s, the Company's primary carhaul business, revenue declined by 12.3%, from \$612.5 million to \$537.3 million, and the unit volumes it shipped declined by 16.9% primarily due to business lost to non-union competitors. The Company expects further revenue and unit volume declines in 2019.

32. More particularly, unit volumes shipped by the Company for Toyota, which was previously the Company's third largest customer, declined by approximately 80% between 2016 and 2018 as Toyota moved substantially all of its business to lower-cost non-union competitors, due, in part, to the risks attendant to the Company's overleverage. The remaining volumes the Company ships for Toyota are at risk of being lost when the Debtors' contract with Toyota expires in 2022.

33. Similarly, GM, the Company's largest customer, which comprised 48% of its revenue in 2018, received a 5% price concession under a new three-year contract executed in 2019 that provides for no annual price increases, and Ford, the Company's second largest customer, received a 1% price concession in 2019. GM, in response to a letter from James P. Hoffa, the President of the International Brotherhood of Teamsters, explained its decision to re-source a substantial portion of

its Jack Cooper business as required by the Company's "uncompetitiveness" and inability to "eliminate the gap" with non-unionized carriers.

34. As the Company has continued to lose business, it has closed 17 of its terminals, resulting in the elimination of approximately 250 driver and mechanic jobs. The Company's remaining terminal network is devoted almost entirely to the assembly plants of GM and Ford that are operated by members of the United Automotive Workers.

35. The Company's declining performance has also been exacerbated by increasing repair and maintenance costs, as much-needed capital expenditures on its aging rig fleet have been deferred. The Company operates a truck fleet with an average age of over 14 years, and limited remaining useful life based on historical data and performance, and has lacked the financial wherewithal to invest in new equipment and major fleet refurbishments. As a result, from 2016 to 2018, repair and maintenance costs have increased by 19%.

36. The Company's overall viability is also linked to that of the automobile industry generally, which has experienced flat to declining demand for new automobiles. For example, U.S. light vehicle sales are expected to decrease by approximately 7.5%, from 17.3 million in 2018 to approximately 16 million in 2021, and to remain at this level through 2024. Light vehicle sales fell 2.3% year-over-year in the first quarter of 2019 alone, due, in part, to reduced consumer affordability from higher borrowing costs and lower tax-return amounts.

#### **B. Multiemployer Pension Plans and Collective Bargaining Agreements**

37. The vast majority of the Company's employees are represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Teamsters") and the International Association of Machinists and Aerospace Workers (the "Machinists"). The

Company is party to collective bargaining agreements with certain terms that are not sustainable given the Company's performance and the competitive landscape.

38. In particular, pursuant to the current collective bargaining agreements with the Teamsters and the Machinists, including employees covered by a set of integrated Teamsters agreements,<sup>7</sup> the Company is obligated to participate in several multiemployer pension funds including, most notably, the Central States, Southeast and Southwest Areas Pension Plan (the "CSPF"). The Company pays contributions on a monthly basis to the pension plans based on specified amounts per week's work for covered employees.

39. The CSPF is one of the nation's largest multiemployer Taft-Hartley defined benefit pension plans, with approximately 400,000 participants across the country. All assets contributed to the CSPF are pooled and available to provide benefits for all eligible participants and beneficiaries. As a result, contributions made by the Debtors benefit not only the Debtors' current and former employees, but also the current and former employees of the many other employers that participate or previously participated in the CSPF.

40. The Debtors contributed \$29.5 million and \$30.6 million to the CSPF for the years ended December 31, 2018 and 2017, respectively. The Debtors cannot afford to continue making contributions at these levels. When a participating employer stops contributing to or withdraws from an underfunded multiemployer pension plan, the employer may be liable for "withdrawal liability"

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<sup>7</sup> The Teamster collective bargaining agreement covers bargaining unit employees who are subject to the Central and Southern Areas Supplemental Agreement expiring on May 31, 2021; the Eastern Area Truckway, Driveway Yard and Shop Supplemental Agreement expiring on May 31, 2021; the Western Area Supplemental Agreement expiring on May 31, 2021; the National Master Automobile Transporters Agreement expiring on May 31, 2021; the Collective Agreement, by and between North American Auto Transportation Corp. and the Teamsters National Automobile Transporters Industry Negotiating Committee expiring on December 31, 2022; and the Collective Agreement, by and between Jack Cooper Rail & Shuttle and Truck Drivers Local Union No. 299 expiring on December 31, 2020 (collectively, the "Teamsters CBA").

under the Employee Retirement Income Security Act of 1974 to compensate for the lost contributions from the withdrawing employer, even when it always paid its required annual contributions to the plan. The Debtors and their actuarial professionals estimate that the Debtors' withdrawal from the CSPF would result in approximately \$2 billion of withdrawal liability. The Debtors certainly do not have the financial wherewithal to pay this massive contingent liability.

41. The Debtors also participate in three other multiemployer pension plans: the International Brotherhood of Teamsters Union Local No. 710 Pension Fund (the "IBT 710 Pension Fund"), the Teamsters Local 560 Benefit Fund (the "Local 560 Benefit Fund"), and the Freight Drivers and Helpers Local Union No. 557 Pension Plan (the "Local 557 Pension Plan," and together with the IBT 710 Pension Fund, and the Local 560 Benefit Fund, the "Other MEPPs"). For the year ended December 31, 2018, the Debtors contributed \$161,000, \$946,000, and \$375,000 to the IBT 710 Pension Fund, the Local 560 Benefit Fund, and the Local 557 Pension Plan, respectively. The Debtors and their actuarial professionals estimate that withdrawal from the Other MEPPs would result in approximately \$120 million.

42. Additionally, the Debtors previously participated in three other multiemployer pension plans: the Teamsters Joint Council No. 83 of Virginia Pension Fund, the Central Pennsylvania Teamsters Defined Benefit Plan, and the Philadelphia and Vicinity Pension Plan. The Debtors withdrew from each of these other multiemployer pension plans prior to 2019, resulting in aggregate withdrawal liability of approximately \$6 million. Payments on the withdrawal liability claims associated with these funds are typically made over several years and bear interest at a rate of approximately 7% per year.

43. In total, the Debtors contributed \$32.6 million and \$34.3 million to multiemployer pension plans for the years ended December 31, 2018 and 2017, respectively. These contribution levels are not sustainable in light of the Debtors' declining revenues and the Debtors' need to obtain new capital to revitalize their fleet and sustain their operations in the current environment. The Debtors' unsustainable labor costs have made it impossible for the Debtors to compete with the increasing number of lower-cost, non-unionized companies that have entered the carhaul industry over the past few decades.

44. To address, in part, its financial challenges, the Company undertook the difficult but necessary task of significantly reducing its non-unionized workforce in 2019. Specifically, the Company eliminated 53 positions primarily comprising corporate accounting, information technology, and operations functions. The Company also allowed the non-unionized workforce to shrink through voluntary attrition. While these measures were a necessary component of rationalizing the Company's cost structure and positioning the Company to succeed in an increasingly competitive marketplace, these reductions were not sufficient to address the Company's labor liabilities.

### **C. The Debtors' Funded Debt Structure and Declining Liquidity**

45. As a result of the Debtors' declining revenues from operations and defaults under their funded debt obligations that constrain its borrowing capacity, described below, the Debtors' liquidity situation has become dire. Additionally, a substantial amount of the Debtors' cash flow is required to pay interest and principal on funded indebtedness. For the years ending December 31, 2018 and December 31, 2017, the Debtors paid approximately \$50 million and \$14.7 million, respectively, on account of funded debt obligations.

46. Moreover, the Debtors are unable to comply with the financial covenants governing the Prepetition Secured Facilities. For example, the First Lien Term Loan Facility includes a financial covenant that provides for a first-lien leverage ratio that steps up each quarter. On March 31, 2019, the Debtors received a notice of default and reservation of rights letter from Cerberus for alleged non-compliance with the financial covenant. Additionally, the Debtors' auditors issued a going concern qualification at the end of the 2018 reporting period. This resulted in a default under the Revolving Credit Facility, and on April 15, 2019, the Debtors and the lenders under the Revolving Credit Facility entered into a waiver of this default. Furthermore, on June 30, 2019, the Debtors determined they did not have the liquidity necessary to make a principal payment due under the First Lien Term Loan Facility, which required the Debtors to obtain a forbearance from the First Lien Lenders to pursue further restructuring discussions with the Prepetition Secured Parties, the CSPF, and the Teamsters. Finally, in July 2019, the Debtors' liquidity levels dipped below the cash dominion threshold of \$8.5 million required under the Revolving Credit Facility, causing Wells Fargo to implement cash dominion procedures, which caused the Debtors' receipts to immediately be used to pay down outstanding obligations under the Revolving Credit Facility.

47. With numerous existing defaults, debt service obligations to the Prepetition Secured Parties of approximately \$13 million within the next six (6) months, complete reliance on the Revolving Credit Facility to fund day-to-day operations, and no ability to obtain bridge financing or otherwise refinance any of the Prepetition Secured Facilities, the Debtors do not have the ability to continue operating as a going concern absent chapter 11 relief.

#### **IV. Prepetition Restructuring Efforts**

48. The Debtors engaged in prior restructuring transactions in 2016 and 2017 in an effort to delever and bring their capital structure in line with revenues. In particular, the Company initiated in October 2016 a tender offer with respect to its then outstanding funded debt (the “2016 Exchange Transaction”). On December 9, 2016, the Company simultaneously settled the 2016 Exchange Transaction and a private exchange for its PIK toggle notes due 2019 (the “PIK Notes”), resulting in a net debt reduction of more than \$100 million.

49. Following the 2016 Exchange Transaction, the Company successfully completed an exchange transaction on June 30, 2017 that retired \$429.2 million of the Company’s outstanding debt, including under its senior secured notes due 2020 and the remaining outstanding PIK Notes (the “2017 Exchange Transaction” and together with the 2016 Exchange Transaction, the “Exchange Transactions”). In total, the tendered notes represented 98.97% of all existing notes eligible to participate in the 2017 Exchange Transaction.

50. The Exchange Transactions reduced the Company’s outstanding debt by over \$300 million in the aggregate and decreased the Company’s annual interest expense by over \$9.8 million, and the financing for the Exchange Transactions effectively extended the maturity date of the Company’s old bond debt by an additional three years, until 2023. Unfortunately, the Debtors’ businesses continued to deteriorate and the deleveraging from the Exchange Transactions proved insufficient.

51. In March 2019, the Debtors engaged certain of the Company Advisors to assess their strategic alternatives, and explore the Debtors’ options to deleverage their capital structure and rationalize their labor-related obligations. Soon thereafter, in April 2019, the Debtors’ management

team and the Company Advisors engaged with the Prepetition Secured Parties and their respective advisors regarding potential restructuring transactions. In the face of a rapidly worsening liquidity position, the Debtors and their Company Advisors concluded that restructuring negotiations would have to take place simultaneously with the Debtors' labor and pension negotiations.

52. These dual-track negotiations were necessary because the Debtors' ability to address their capital structure required pension modifications from the CSPF as well as pension and work-rule modifications to their collective bargaining agreements (the "CBAs") with the Teamsters. Furthermore, given that the vast majority of the Debtors' revenues are dependent upon a handful of OEM customers, the Debtors believe it is imperative to avoid a litigious and protracted chapter 11 case and the attendant risk that key customers could lose confidence in the Company's ability to restructure and move their business to the Debtors' competitors. Accordingly, the Debtors' management team and the Company Advisors prioritized developing, negotiating and implementing a pre-negotiated restructuring supported by the Prepetition Secured Parties, the CSPF, and the Teamsters.

A. Initial Negotiations with the Prepetition Secured Parties

53. In April 2019, the Debtors initially engaged with the Prepetition Secured Parties regarding the Debtors' strategic alternatives and potential transaction structures. The Debtors determined that building consensus to implement a pre-negotiated transaction would require the Junior Term Loan Lenders to equitize the Junior Term Loans through a credit bid for the Debtors' assets.

54. The Junior Term Loan Lenders retained Kirkland & Ellis LLP ("K&E") as legal advisor, and PJT Partners, Inc. ("PJT," and together with K&E, the "Junior Term Loan Lenders'

Advisors”), as investment banker and financial advisor, to advise the Junior Term Loan Lenders on the terms of a comprehensive restructuring transaction that would best position the Company for long-term success. Shortly thereafter, the Company opened an “advisors’ only” electronic data site containing extensive financial, legal, and corporate diligence materials, including substantial materials relating to the Company’s labor- and pension-related obligations. Under the direction of the Company’s senior management, the Company engaged with the Junior Term Loan Lenders and the Junior Term Loan Lenders’ Advisors on a comprehensive restructuring to best position it for long-term success.

55. The Junior Term Loan Lenders’ Advisors concurred with the Debtors’ assessment that a viable restructuring transaction (a) would require substantial deleveraging, reduction in pension contributions, and other pension and labor contract modifications and (b) should be pursued consensually with all parties on a prepetition basis to the maximum extent possible to minimize the risk of disruption to the Debtors’ businesses.

56. The Debtors also needed to obtain the support of Wells Fargo and Cerberus to provide liquidity and modify their respective debt documents to enable the Debtors to restructure and to execute on their business plan.

B. Labor and Pension Negotiations

57. On the labor and pension front, the Company and the Company’s Advisors engaged in extensive negotiations with representatives of the CSPF and the Teamsters leadership to reduce the Company’s pension obligations and modify the CBAs. Through initial discussions with representatives of the Teamsters, it was conveyed that the Company must first reach an agreement

with the CSPF regarding reductions to the current pension obligations before the Teamsters leadership could agree on any modifications to the CBAs.

58. Accordingly, beginning in June 2019, the Debtors and representatives of the CSPF began to trade drafts of an initial term sheet regarding, among other things, modifications to the Debtors' obligations to the CSPF. The Debtors' management team and the Company Advisors also engaged in in-person meetings to further these negotiations. Through these initial negotiations with the CSPF, the CSPF made clear that the only way the Debtors would be able to reduce their pension obligations to the CSPF on a consensual basis would be to: (a) withdraw from the CSPF and trigger the Debtors' approximately \$2 billion in unsecured withdrawal liability; (b) effectuate a sale transaction of the Debtors' assets free and clear of all claims, liens, encumbrances and successor liability to a new employer that would then commence participating in the CSPF as a "New Employer" in its "Hybrid Plan" with a reduced pension contribution rate; and (c) obtain ratification from the membership of the Teamsters of new or modified CBAs that would permit the Debtors to reduce their pension obligations.

59. While negotiations with the CSPF were ongoing, the Debtors engaged with the Teamsters leadership regarding an initial proposal for modification to the CBAs. In early July, the Company's management, the Company Advisors, and the Teamsters' leadership conducted an in-person meeting to push forward negotiations regarding modifications to the CBAs. While these initial negotiations were constructive, the Teamsters leadership continued to convey that the Company needed to reach an agreement with the CSPF on a path forward, before the Teamsters leadership would be in a position to evaluate the Debtors' proposed CBA modifications.

60. As such, the Company focused its efforts on negotiating with representatives of the CSPF regarding the Company's pension obligations. After multiple meetings, exchanges of numerous term sheet drafts, and various discussions, the Company and the Stalking Horse Bidder were able to arrive at an agreement with the CSPF on July 25, 2019, the material terms of which are reflected in the MEPP Term Sheet (as defined in the RSA) (the "CSPF Resolution").

61. The CSPF Resolution was a critical step in the Company's restructuring efforts and paved the way for the Company to further engage with the Teamsters leadership in an effort to negotiate consensual modifications to the CBAs, which modifications are vital to implement the Company's restructuring.

62. With the MEPP Term Sheet in hand, the Company engaged in extensive round-the-clock negotiations with the Teamsters' leadership regarding modifications to the CBAs necessary to effectuate the restructuring. The Company and the Teamsters exchanged numerous term sheets during these negotiations, and worked tirelessly in an effort to reach common ground. These hard-fought negotiations culminated in the parties reaching an agreement that would restructure Company payments currently being made into the CSPF, allow the Company to completely withdraw from the Other MEPPs and modify certain work rules under the existing CBAs. These proposed changes are subject to ratification by the union membership. Without the pension relief and work rule modifications, the Company would not be financially viable. The proposed CBA modifications are reflected in the CBA Term Sheet (as defined in the RSA) (the "Proposed IBT Resolution"). Importantly, such modifications are subject to ratification by the participating members of the Teamsters. The Debtors also intend to initiate negotiations soon to discuss modification of its Machinists' labor agreements.

C. Development of Pre-Negotiated Restructuring and Entry into RSA

63. At the same time the Company and the Company Advisors were engaged in negotiations with representatives of the CSPF and the Teamsters, they also engaged in extensive negotiations with the Prepetition Secured Parties regarding a transaction that would result in the going-concern sale of substantially all of the Debtors' assets to the Stalking Horse Bidder pursuant to a credit bid under section 363(b) of the Bankruptcy Code, subject to higher or better offers.

64. These discussions revolved around the development of a restructuring framework to implement the Sale Transaction, including the means through which the Company would fund its restructuring process, the terms of the asset purchase agreement governing the Sale Transaction, the new Company's exit financing needs, and the terms of the secured debt the Stalking Horse Bidder would assume in connection with the Sale Transaction. The negotiations culminated in the Company, the First Lien Term Loan Lenders, and the Junior Term Loan Lenders entering into the RSA, which incorporates the CSPF Resolution, the Proposed IBT Resolution and the RSA parties' commitment to support the Sale Transaction, is the cornerstone of the Debtors' pre-negotiated restructuring and the product of hard-fought negotiations on multiple fronts.

65. To effect the transactions contemplated by the RSA, the Stalking Horse Bidder will credit bid claims under the Junior Term Loan Facilities and loans under the Term DIP Facility (defined below) as consideration for the Sale Transaction. Furthermore, Cerberus will waive amortization payments on the First Lien Term Loan Facility, not seek payment of default rate interest during the Chapter 11 Cases, consent to the credit bid by the Stalking Horse Bidder and agree to the Stalking Horse Bidder's assumption of the First Lien Term Loan Facility with modifications to the financial covenants and other terms to enable the Stalking Horse Bidder to

implement its business plan. The RSA also contemplates that upon consummation of the Sale Transaction, the Stalking Horse Bidder will have a minimum of \$20 million in liquidity as of the date of closing.

66. The RSA also contemplates that the Junior Term Loan Lenders will provide a new money junior secured \$15 million multi-draw term loan debtor-in-possession financing facility to the Company (the “Term DIP Facility”) that will be credit bid in connection with the Sale Transaction. In addition, Wells Fargo will provide a senior secured superpriority asset based revolving lending facility with commitments of up to \$85 million (the “ABL DIP Facility” and, together with the Term DIP Facility, the “DIP Facilities”). Without the DIP Facilities, the Company would not be able to sustain operations and effectuate its restructuring. The proposed DIP Facilities will provide critical liquidity necessary to, among other things, operate the business in the ordinary course and administer these Chapter 11 Cases.

67. Importantly, pursuant to the RSA, the Debtors will market and seek Court approval of the Sale Transaction through a thorough marketing process to ensure that the Sale Transaction is open to all bidders and that the Debtors receive the highest or otherwise best offer for their assets. The Debtors believe that the RSA, the Sale Transaction and the postpetition marketing process will maximize the value of the Debtors’ estates, maintain the Debtors as a viable going-concern, preserve jobs for the Debtors’ employees, and put the Company in a position to execute on its business plan, reinvest in the business to upgrade its fleet, and pursue future growth opportunities.

#### **V. First Day Motions**

68. Contemporaneously herewith, the Debtors have filed a number of First Day Motions in these Chapter 11 Cases seeking various forms of relief intended to stabilize the Debtors’ business

operations, facilitate the efficient administration of these Chapter 11 Cases, and expedite a swift and smooth restructuring to consummate the Sale Transaction. The First Day Motions include:

A. Administrative Motions

- (i) *Notice of Designation as Complex Chapter 11 Bankruptcy Case ("Complex Case Designation")*
- (ii) *Debtors' Request for Expedited Consideration of Certain First Day Matters ("Expedited First Day Hearing Motion")*
- (iii) *The Debtors' Motion for an Order Directing Joint Administration of the Debtors' Chapter 11 Cases ("Joint Administration Motion")*
- (iv) *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Prepare a List of Creditors in Lieu of Submitting a Formatted Mailing Matrix and (B) File a Consolidated List of the Debtors' 30 Largest Unsecured Creditors, (II) Authorizing the Debtors to Redact Certain Personal Identification Information for Individual Creditors, and (III) Approving the Form and Manner of Notifying Creditors of Commencement of these Chapter 11 Cases ("Consolidated Top 30 and Matrix Motion")*
- (v) *Debtors' Motion for Entry of an Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports ("SOFAs / Schedules Extension / Waiver Motion")*
- (vi) *Debtors' Motion for Entry of Order (I) Authorizing Jack Cooper Ventures, Inc. to Act as Foreign Representative, and (II) Granting Related Relief ("Foreign Representative Motion")*
- (vii) *Debtors' Application for an Order Authorizing the Employment, Retention and Appointment of Prime Clerk, LLC as Claims and Noticing Agent and Administrative Advisor for the Debtors Nunc Pro Tunc to the Petition Date ("Prime Clerk Retention Application")*

B. Operational Motions Requesting Immediate Relief

- (i) *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing and (B) to Use Cash Collateral, (II) Granting Adequate Protection to Certain Prepetition Secured Parties,*

*(III) Scheduling a Final Hearing; and (B) Granting Related Relief (“DIP Motion”)*

- (ii) *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash Management System and (B) Maintain Existing Bank Accounts and Business Forms, (II) Authorizing Continued Intercompany Transactions, (III) Granting Administrative Expense Status to Intercompany Claims, and (IV) Granting Related Relief (“Cash Management Motion”)*
- (iii) *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Certain Prepetition Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (II) Continue Employee Benefits (“Wages Motion”)*
- (iv) *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors, Foreign Vendors, and 503(b)(9) Claimants and (II) Granting Related Relief (“Critical Vendors Motion”)*
- (v) *Debtors’ Motion for Entry of Interim and Final Order Authorizing the Payment of Certain Prepetition Taxes and Fees (“Taxes Motion”)*
- (vi) *Debtors’ Motion for Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services (“Utilities Motion”)*
- (vii) *Debtors’ Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to the Common Stock (“Equity Trading Motion”)*
- (viii) *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Continue Customer Programs and Honor Certain Prepetition Obligations Related Thereto, and (II) Granting Related Relief (the “Customer Programs Motion”)*
- (ix) *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Insurance Coverage Entered Into Prepetition and Satisfy Prepetition Obligations Related Thereto, (II) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (III) Honor the Terms of the Premium Financing Agreements and Pay Premiums Thereunder, (IV) Enter into New Premium Financing Agreements in the Ordinary Course of Business, and (V) Granting Related Relief (“Insurance Motion”)*

69. The First Day Motions seek authority to, among other things, obtain debtor-in-possession financing and use cash collateral on an interim basis, honor employee-related wage and benefits obligations, pay certain prepetition accounts payable claims in the ordinary course of business, and ensure the continuation of the Debtors' cash management systems and other business operations without interruption. I believe that the relief requested in the First Day Motions is also necessary to allow the Debtors to successfully implement the Plan and promptly emerge from chapter 11.

70. Several of the First Day Motions request authority to pay certain prepetition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedures provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first twenty days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates.

71. I am familiar with the content and substance of the First Day Motions. The facts stated therein are true and correct to the best of my knowledge, information, and belief, and I believe that the relief sought in each of the First Day Motions is necessary to enable the Debtors to operate in chapter 11 with minimal disruption to their business operations and constitutes a critical element in successfully restructuring the Debtors' businesses.

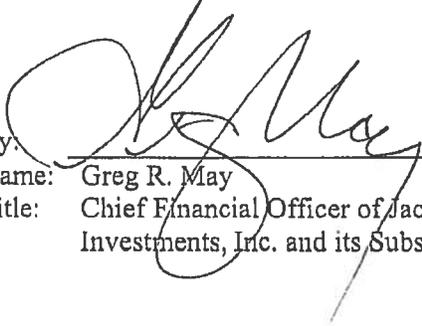
72. For the reasons stated herein and in each of the First Day Motions filed concurrently or in connection with the commencement of these cases, I respectfully request that each of the First

Day Motions be granted in its entirety, together with such other and further relief as this Court deems just and proper.

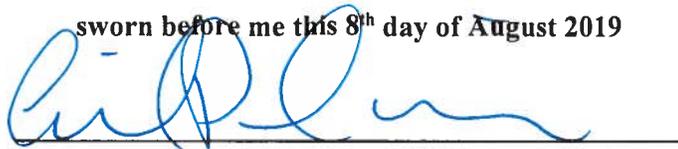
*[Remainder of Page Intentionally Left Blank]*

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Declaration, the foregoing is true and correct.

Date: August 6, 2019

By:   
Name: Greg R. May  
Title: Chief Financial Officer of Jack Cooper Investments, Inc. and its Subsidiaries

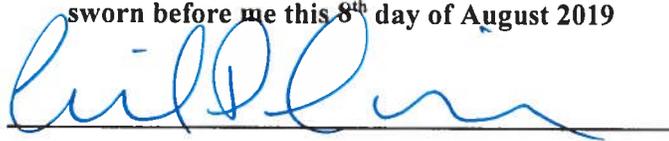
**This is Exhibit "B" to the Affidavit of Greg R. May  
sworn before me this 8<sup>th</sup> day of August 2019**

A handwritten signature in blue ink is written over a solid horizontal line. The signature is cursive and appears to be the name of the Commissioner for Oaths/Notary Public.

A Commissioner for Oaths/Notary Public in and for the Province of Alberta



**This is Exhibit "C" to the Affidavit of Greg R. May  
sworn before me this 8<sup>th</sup> day of August 2019**

A handwritten signature in blue ink is written over a solid horizontal line. The signature is cursive and appears to be 'Bill D. ...'.

A Commissioner for Oaths/Notary Public in and for the Province of Alberta

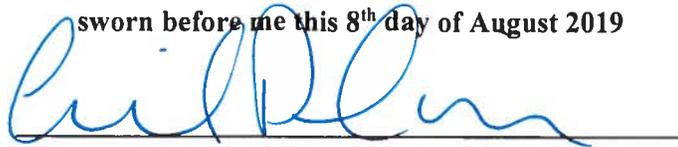
**JC Canada Group**  
Summary of accounts  
As at June 30, 2019  
*In \$USD*

Cash	1,446,362
Accounts Receivable	3,944,692
Prepaid & Other Assets	1,145,534
Inventory	294,032
Equipment	2,039,137
<b>Total Assets</b>	<b>8,869,757</b>

Accounts payable	1,161,527
Accrued liabilities	1,088,838
Intercompany (net balance)	16,853,141
<b>Total Liabilities</b>	<b>19,103,505</b>

Equity	(10,233,748)
<b>Total Liabilities and Equity</b>	<b>8,869,757</b>

**This is Exhibit "D" to the Affidavit of Greg R. May  
sworn before me this 8<sup>th</sup> day of August 2019**

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is cursive and appears to be the name of the Commissioner for Oaths/Notary Public.

A Commissioner for Oaths/Notary Public in and for the Province of Alberta

**THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.**

***RESTRUCTURING SUPPORT AGREEMENT***

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 14.02, this “**Agreement**”) is made and entered into as of August 6, 2019 (the “**Execution Date**”), by and among the following parties (each of the following described in sub-clauses (i) through (v) of this preamble, individually, each a “**Party**” and, collectively, the “**Parties**”):<sup>1</sup>

- i. Jack Cooper Investments, Inc., a company incorporated under the Laws of Delaware (“**Jack Cooper**”), and each of its affiliates<sup>2</sup> that have executed and delivered counterpart signature pages to this Agreement to counsel to the Consenting Lenders (the Entities in this clause (i), collectively, the “**Company Parties**”);
- ii. the undersigned holders of First Lien Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (ii), collectively, and in their capacity as such, the “**Consenting First Lien Term Loan Lenders**”);
- iii. the undersigned holders of 1.5 Lien Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (iii), collectively, and in their capacity as such, the “**Consenting 1.5 Lien Term Loan Lenders**”);
- iv. the undersigned holders of Second Lien Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (iv), collectively, and in their capacity as such, the “**Consenting Second Lien Term Loan Lenders**”); and

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<sup>1</sup> Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1.

<sup>2</sup> Affiliates shall include Jack Cooper Ventures, Inc.; Jack Cooper Diversified, LLC; Jack Cooper Enterprises, Inc.; Jack Cooper Holdings Corp.; Jack Cooper Transport Company, Inc.; Auto Handling Corporation; CTEMS, LLC; Jack Cooper Logistics, LLC; Auto & Boat Relocation Services, LLC; Axis Logistic Services, Inc.; Jack Cooper CT Services, Inc.; Jack Cooper Rail and Shuttle, Inc.; Jack Cooper Investments, Inc.; North American Auto Transportation Corp.; Jack Cooper Transport Canada, Inc.; Jack Cooper Canada GP 1 Inc.; Jack Cooper Canada GP 2 Inc.; Jack Cooper Canada 1 Limited Partnership; and Jack Cooper Canada 2 Limited Partnership.

- v. any person or Entity that subsequently becomes a party hereto that executes and delivers a Joinder or Transfer Agreement.

#### ***RECITALS***

**WHEREAS**, the Company Parties and the Consenting Lenders have in good faith and at arm's length negotiated or been apprised of certain restructuring transactions with respect to the Company Parties' capital structure on the terms set forth in this Agreement, and as set forth in the Restructuring Term Sheet attached to this Agreement as **Exhibit A** (the "**Restructuring Transactions**");

**WHEREAS**, the Parties intend to implement the Restructuring Transactions through the commencement of voluntary cases by the Company Parties under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the Northern District of Georgia under the terms and conditions set forth in the Restructuring Term Sheet;

**WHEREAS**, recognition of the Chapter 11 Cases (the "**CCAA Proceeding**") will be sought in the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") pursuant to Part IV of the Companies' Creditors Arrangement Act (the "**CCAA**");

**WHEREAS**, the Revolver Lenders and certain affiliates of the Consenting 1.5 Lien Term Loan Lenders and Consenting Second Lien Term Loan Lenders have agreed to provide, on a committed basis, the Company Parties with debtor-in-possession financing (the "**DIP Facilities**"); and

**WHEREAS**, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Restructuring Term Sheet.

**NOW, THEREFORE**, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

#### ***AGREEMENT***

##### **Section 1. *Definitions and Interpretation.***

1.01. **Definitions.** The following terms shall have the following definitions:

"**1.5 Lien Agent**" means Wilmington Trust, National Association, in its capacity as administrative and collateral agent for the 1.5 Lien Credit Agreement.

"**1.5 Lien Claims**" means any Claims on account of or arising under the 1.5 Lien Credit Agreement.

"**1.5 Lien Credit Agreement**" means that certain Amended and Restated Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among certain entities of the Company Parties, the 1.5 Lien Agent, and the banks, financial institutions, and other lenders party thereto.

"**9.25% Indenture**" means that certain Fourth Supplemental Indenture, dated as of June 30, 2017 (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among certain entities of the Company, U.S. Bank, National Association, as trustee and collateral agent.

“**9.25% Notes**” means the obligations outstanding under the 9.25% Indenture.

“**9.25% Notes Claims**” means any Claims on account of or arising under the 9.25% Notes.

“**ABL DIP Facility**” means that certain debtor-in-possession asset based loan facility, the terms of which shall be materially consistent with the Revolving Credit Facility Agreement, as modified to reflect the terms set forth in the Restructuring Term Sheet and other customary adjustments.

“**Agent**” means any administrative agent, collateral agent, or similar Entity under the Credit Agreements, including any successors thereto.

“**Agents/Trustees**” means, collectively, each of the Agents and Trustees.

“**Agreement**” has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 14.02 (including the Restructuring Term Sheet and all exhibits thereto, including the CBA Term Sheet and the CSPF Term Sheet).

“**Agreement Effective Date**” means the date on which the conditions set forth in Section 2 of this Agreement have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

“**Agreement Effective Period**” means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

“**Alternative Transaction Proposal**” means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, wind down, debt investment, financing, joint venture, partnership, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, debtor-in-possession financing, exit financing, use of cash collateral, share exchange, business combination, or similar transaction, in each case to the extent received after the Agreement Effective Date, involving any one or more Company Parties or the debt, equity, or other interests in any one or more Company Parties that is an alternative to the Restructuring Transactions.

“**APA**” has the meaning set forth in the Restructuring Term Sheet.

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Georgia.

“**Bennett Jones**” means Bennett Jones LLP as Canadian counsel to the Consenting Junior Term Loan Lenders.

“**Bid Deadline**” has the meaning set forth in the Bidding Procedures Order.

“**Bidding Procedures**” has the meaning set forth in the Restructuring Term Sheet.

“**Bidding Procedures Order**” has the meaning set forth in the Restructuring Term Sheet.

**“Bidding Procedures Recognition Order”** means an order of the CCAA Court recognizing the Bidding Procedures Order, which order shall be consistent in all material respects with this Agreement and the APA, and otherwise in form and substance acceptable to the Company Parties and the Required Consenting Junior Term Loan Lenders.

**“Business Day”** means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

**“Cause of Action”** means any action, Claim, cross-claim, counterclaim, third-party claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, loss, debt, recoupment, damage, judgment, account, defense, objection, remedies, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or noncontingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in contract or in tort, in law or in equity, or pursuant to any other theory of law (including, without limitation, under any state, provincial, or federal securities laws).

**“CBA Term Sheet”** means the term sheet attached to the Restructuring Term Sheet as Exhibit 2, as may be amended, supplemented, or modified.

**“CBAs”** means the Company Parties’ U.S. collective bargaining agreements.

**“CCAA”** has the meaning set forth in the recitals to this Agreement.

**“CCAA Court”** has the meaning set forth in the recitals to this Agreement.

**“CCAA Proceeding”** has the meaning set forth in the recitals to this Agreement.

**“Central States Plan”** means the Central States, Southeast and Southwest Areas Pension Plan.

**“Cerberus”** means Cerberus Business Finance Agency, LLC.

**“Chapter 11 Cases”** has the meaning set forth in the recitals to this Agreement.

**“Claim”** has the meaning ascribed to it in section 101(5) of the Bankruptcy Code and section 2(1) of the CCAA.

**“Closing Date”** has the meaning set forth in the Restructuring Term Sheet.

**“Company”** means, collectively, Jack Cooper Investments, Inc., a Delaware corporation, and each of its direct and indirect subsidiaries.

**“Company Claims/Interests”** means any Claim against, or Equity Interest in, a Company Party, including the Revolving Credit Facility Claims, the First Lien Claims, the 1.5 Lien Claims, the Second Lien Claims, the DSJL Mortgage Claims, the Westside Bank Mortgage Claims, the 9.25% Notes Claims, and the Pension Withdrawal Note Claims.

**“Company Parties”** has the meaning set forth in the recitals to this Agreement.

**“Confidentiality Agreement”** means (i) an executed confidentiality agreement, including with respect to the issuance of a “cleansing letter” or other public disclosure of material non-public information agreement, as applicable, in connection with any proposed Restructuring Transactions, or (ii) any

confidentiality obligations in any other agreements, including, for the avoidance of doubt, in the Credit Agreements.

**“Consenting 1.5 Lien Term Loan Lenders”** has the meaning set forth in the preamble to this Agreement.

**“Consenting First Lien Term Loan Lenders”** has the meaning set forth in the preamble to this Agreement.

**“Consenting Junior Term Loan Lenders”** means, collectively, the Consenting 1.5 Lien Term Loan Lenders and the Consenting Second Lien Term Loan Lenders.

**“Consenting Lender Advisors”** means, collectively, the respective counsels to (a) each of the Agents (excluding the Revolver Agent), (b) the Consenting First Lien Term Loan Lenders, and (c) the Consenting Junior Term Loan Lenders.

**“Consenting Lender Fees and Expenses”** has the meaning set forth in Section 14.21(a) of this Agreement.

**“Consenting Lenders”** means, collectively, the Consenting First Lien Term Loan Lenders, and the Consenting Junior Term Loan Lenders, and any person or Entity that subsequently becomes a party hereto that executes and delivers a Joinder or Transfer Agreement.

**“Consenting Second Lien Term Loan Lenders”** has the meaning set forth in the preamble to this Agreement.

**“Credit Agreements”** means, collectively, the Revolving Credit Facility Credit Agreement, the First Lien Credit Agreement, the 1.5 Lien Credit Agreement, and the Second Lien Credit Agreement.

**“CSPF Support Agreement”** means that certain Pension Plan Treatment Agreement, dated as of August 6, 2019, by and among the Company Parties, the Central States Plan, and the Purchaser, and attached as Exhibit 3 to the Restructuring Term Sheet.

**“CSPF Term Sheet”** means that certain term sheet attached as Exhibit A to the CSPF Support Agreement.

**“Debtors”** means each of the Company Parties as debtors and debtors in possession in the Chapter 11 Cases.

**“Definitive Documents”** means the documents listed in Section 3.01 of this Agreement.

**“DIP Agents”** means, collectively, the “Administrative Agent,” as defined in the DIP Credit Agreements.

**“DIP Credit Agreements”** means, collectively, the credit agreements governing the ABL DIP Facility and the Term DIP Facility.

**“DIP Facilities”** means, collectively, the ABL DIP Facility and the Term DIP Facility.

**“DIP Lender”** means a lender under either the ABL DIP Facility or the Term DIP Facility.

“**DIP Motion**” means the motion to be filed by the Company Parties with the Bankruptcy Court seeking Bankruptcy Court approval of the DIP Facilities, which motion shall be consistent with this Agreement, the Restructuring Term Sheet, and otherwise in form and substance acceptable to the DIP Lenders, the Required Consenting Lenders and the Company Parties.

“**DIP Orders**” means, collectively, the Interim DIP Order, the Final DIP Order, the Interim DIP Recognition Order, and the Final DIP Recognition Order.

“**DIP Secured Parties**” means the DIP Lenders together with the DIP Agent and the Issuing Banks and the other Secured Parties (each as defined in the DIP Credit Agreements).

“**Disclosure Schedules**” has the meaning set forth in the APA.

“**DSJL Mortgage**” means the obligations outstanding under that certain secured promissory note, dated as of August 17, 2018, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, among certain entities of the Company and DSJL Properties, LLC.

“**DSJL Mortgage Claims**” means any Claims on account of or arising under the DSJL Mortgage.

“**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

“**Equity Interests**” means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Company Party, and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Company Party (in each case whether or not arising under or in connection with any employment agreement).

“**ERISA Affiliate**” means any corporation or any unincorporated trade or business that could, at any relevant time, be treated as a single employer with any Entity pursuant to Section 4001(b) of the Employee Retirement Income Security Act of 1974, as amended, or Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended.

“**Execution Date**” has the meaning set forth in the preamble to this Agreement.

“**Executory Contract or Unexpired Lease**” means any contract or unexpired lease to which one or more of the Company Parties is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“**Existing Employment Agreement**” means each of the agreements, offer letters, or programs in place as between the Company Parties and the following officers, directors, and members of management as of the Petition Date (which, for the avoidance of doubt, shall be consistent with the Restructuring Term Sheet and the APA in all respects): (i) the Chief Executive Officer; (ii) the Chief Financial Officer; (iii) the Executive Chairperson; (iv) the General Counsel, Executive Vice President and Chief Risk Officer; (v) the Associate General Counsel and Chief Human Resources Officer; (vi) the Chief Information Officer; (vii) the President of Transport; and (viii) the President of Logistics.

“**Exit Financing Documents**” means the agreements memorializing any exit financing facilities, including any amendments, modifications, supplements thereto, and together with any related notes, certificates, agreements, intercreditor agreements, security agreements, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related

to or executed in connection with any exit financing, each of which shall be in form and substance consistent in all material respects with this Agreement and acceptable to each of the lenders under the exit financing facilities, the Company Parties, and the Purchaser.

**“Exit First Lien Term Loan Facility”** has the meaning set forth in the Restructuring Term Sheet.

**“Final DIP Order”** means a final order of the Bankruptcy Court approving the DIP Motion, which order shall be consistent in all material respects with this Agreement and the DIP Credit Agreements and otherwise in form and substance acceptable to the Company Parties, the DIP Lenders, and the Required Consenting Lenders.

**“Final DIP Recognition Order”** means an order of the CCAA Court recognizing the Final DIP Order, which order shall be consistent in all material respects with this Agreement and the DIP Credit Agreements, and otherwise in form and substance acceptable to the Company Parties, the DIP Lenders, and the Required Consenting Lenders.

**“Final Order”** means an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Case or the docket of any other court of competent jurisdiction, which has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending; or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

**“First Lien Agent”** means Cerberus in its capacity as administrative and collateral agent under the First Lien Credit Agreement.

**“First Lien Claims”** means any Claims on account of or arising under the First Lien Credit Agreement.

**“First Lien Credit Agreement”** means that certain Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among certain of the Company Parties, Cerberus, as agent, and the banks, financial institutions, and other lenders party thereto.

**“First Lien Term Loan Facility”** has the meaning set forth in the Restructuring Term Sheet.

**“Hybrid Plan Participation Agreement”** means the Hybrid Plan Participation and Release Agreement by and among, the Central States Plan, the Purchaser, and certain of the Company Parties that shall be consistent in all respects with the CSPF Term Sheet and become effective on the Closing Date.

**“Interim DIP Order”** means an interim order of the Bankruptcy Court approving the DIP Motion, which order shall be consistent in all material respects with this Agreement and the DIP Credit Agreements, and otherwise in form and substance acceptable to the Company Parties, the DIP Lenders, and the Required Consenting Lenders.

“**Interim DIP Recognition Order**” means an order of the CCAA Court recognizing the Interim DIP Order, which order shall be consistent in all material respects with this Agreement and the DIP Credit Agreements, and otherwise in form and substance acceptable to the Company Parties, the DIP Lenders, and the Required Consenting Lenders.

“**Jack Cooper**” has the meaning set forth in the preamble to this Agreement.

“**Joinder**” means a joinder to this Agreement substantially in the form attached to this Agreement as **Exhibit B**.

“**Junior Credit Agreements**” means the Second Lien Credit Agreement and the 1.5 Lien Credit Agreement.

“**K&E**” means Kirkland & Ellis LLP as counsel to the Consenting Junior Term Loan Lenders.

“**Law**” means any federal, state, provincial, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court and the CCAA Court).

“**Milestones**” has the meaning set forth in the Restructuring Term Sheet.

“**Outside Date**” means the date that is 105 days after the Petition Date.

“**Parties**” has the meaning set forth in the preamble to this Agreement.

“**Pension Withdrawal Note Claims**” means the obligations outstanding under those certain unsecured note related to certain partial and complete pension withdrawal liability assessments arising prior to the Petition Date, including approximately \$6,400,000 in the aggregate principal amount outstanding, plus all interest, fees, expenses, costs, and other charges arising under or related thereto.

“**Permitted Transferee**” means each transferee of any Company Claims/Interests who meets the requirements of Section 9.01 of this Agreement.

“**Petition Date**” means August 6, 2019.

“**PJT**” means PJT Partners, Inc. as advisor to the Consenting Junior Term Loan Lenders.

“**Purchaser**” means the purchaser of all, or substantially all, of the Company Parties’ assets pursuant to the APA.

“**Related Parties**” means, with respect to any entity, such entity’s predecessors, successors, assigns, and present and former affiliates (whether by operation of Law or otherwise) and subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity, including in their capacity as directors of or board observers to the Company Parties, as applicable.

**“Required Consenting 1.5 Lien Term Loan Lenders”** means, as of the date of determination, Consenting 1.5 Lien Term Loan Lenders holding at least 50.1% of the aggregate outstanding principal amount of the 1.5 Lien Claims that are held by Consenting 1.5 Lien Term Loan Lenders.

**“Required Consenting First Lien Term Loan Lenders”** means, as of the date of determination, Consenting First Lien Term Loan Lenders holding at least 50.1% of the aggregate outstanding principal amount of the First Lien Claims that are held by Consenting First Lien Term Loan Lenders.

**“Required Consenting Junior Term Loan Lenders”** means, as of the date of determination, the Required Consenting 1.5 Lien Term Loan Lenders and the Required Consenting Second Lien Term Loan Lenders.

**“Required Consenting Lenders”** means, collectively, the Required Consenting First Lien Term Loan Lenders and the Required Consenting Junior Term Loan Lenders.

**“Required Consenting Second Lien Term Loan Lenders”** means, as of the date of determination, Consenting Second Lien Term Loan Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Second Lien Claims that are held by Consenting Second Lien Term Loan Lenders.

**“Restructuring Term Sheet”** means the term sheet attached hereto as **Exhibit A**.

**“Restructuring Transactions”** has the meaning set forth in the recitals to this Agreement.

**“Revolver Agent”** means Wells, in its capacity as administrative and collateral agent under the Revolving Credit Facility Credit Agreement.

**“Revolving Credit Facility Claims”** means any Claims on account of or arising under the Revolving Credit Facility Credit Agreement.

**“Revolving Credit Facility Credit Agreement”** means that certain Second Amended and Restated Credit Agreement, dated as of February 15, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among certain of the Company Parties, Wells, as lead arranger, sole bookrunner, and administrative agent, and the banks, financial institutions, and other lenders party thereto.

**“Revolver Lenders”** means the lenders under the Revolving Credit Facility Credit Agreement.

**“Rules”** means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

**“Sale Order”** has the meaning set forth in the Restructuring Term Sheet.

**“Sale Recognition Order”** means an order of the CCAA Court recognizing the Sale Order, which order shall be consistent in all material respects with this Agreement and the DIP Credit Agreements, and otherwise in form and substance acceptable to the Company Parties and the Required Consenting Lenders.

**“Sale Transaction”** means a sale of all, or substantially all of the Debtors’ assets to a Purchaser to be consummated under the APA, the Sale Order pursuant to section 363 of the Bankruptcy Code and the Sale Recognition Order.

**“Schulte”** means Schulte Roth & Zabel LLP as counsel to the First Lien Agent and the Consenting First Lien Term Loan Lenders.

“**Second Lien Agent**” means Wilmington Trust, National Association, in its capacity as administrative and collateral agent for the Second Lien Credit Agreement.

“**Second Lien Claims**” means any Claims on account of or arising under the Second Lien Credit Agreement.

“**Second Lien Credit Agreement**” means that certain Amended and Restated Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among certain of the Company Parties, the Second Lien Agent, and the banks, financial institutions, and other lenders party thereto.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Term DIP Claims**” means any Claims on account of or arising under the credit agreement governing the Term DIP Facility.

“**Term DIP Facility**” means that certain debtor-in-possession term loan financing facility, the terms of which shall be consistent with this Agreement and the Restructuring Term Sheet and shall otherwise be acceptable to the Company Parties and the Required Consenting Lenders in all material respects.

“**Termination Date**” means the date on which termination of this Agreement as to a Party is effective in accordance with Sections 12.01, 12.02, 12.03, or 12.04 of this Agreement.

“**Transfer Agreement**” means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement and substantially in the form attached hereto as **Exhibit C**.

“**Transfer**” means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales or other transactions).

“**Trustee**” means any indenture trustee, collateral trustee, or other trustee or similar Entity under the 9.25% Notes.

“**Wells**” means Wells Fargo Capital Finance, LLC.

“**Westside Bank Mortgage Claims**” means any Claims on account of or arising under the Westside Bank Mortgage.

“**Westside Bank Mortgage**” means the obligations outstanding under that certain secured Business Loan Agreement, dated as of November 14, 2018, and the related security and mortgage documentation (each as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among Jack Cooper Holdings Corp. and Westside Bank, as lender.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; *provided*, that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to “Sections” are references to Sections of this Agreement;

(f) the words “herein,” “hereof,” and “hereto” refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the words “include,” “includes,” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation”;

(j) any reference in this Agreement (including any exhibits and schedules hereto) to “dollars” or “\$” shall mean U.S. dollars;

(k) the phrase “counsel to the Consenting Lenders” refers in this Agreement to each counsel specified in Section 14.10 of this Agreement other than counsel to the Company Parties; and

(l) the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**Section 2. *Effectiveness of this Agreement.***

2.01. This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties, excluding any transferee or joinder party;

(b) the following shall have executed and delivered counterpart signature pages of this Agreement to counsel to the Company Parties and the Consenting Lender Advisors:

- Claims;
- (i) holders of 100% of the aggregate outstanding principal amount of the First Lien
- Claims; and
- (ii) holders of 100% of the aggregate outstanding principal amount of the 1.5 Lien
- Claims.
- (iii) holders of 100% of the aggregate outstanding principal amount of the Second Lien

(c) counsel to the Company Parties shall have given notice to counsel to the Consenting Lenders in the manner set forth in Section 14.10 of this Agreement (by email or otherwise) that the other conditions to the Agreement Effective Date set forth in this Section 2.01 have occurred.

**Section 3. *Definitive Documents.***

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following: (a) the APA; (b) the Sale Order and the Sale Recognition Order; (c) the Bidding Procedures Order and the Bidding Procedures Recognition Order; (d) the DIP Orders and the DIP Recognition Orders; (e) the DIP Credit Agreements; (f) the CBA Term Sheet and any definitive documentation implementing the transactions thereunder; (g) the Hybrid Plan Participation Agreement; (h) the CSPF Term Sheet; (j) the CSPF Support Agreement; (k) the Exit Financing Documents; and (l) any additional documentation necessary to implement the Sale Transaction.

3.02. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter, or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with Section 13 of this Agreement. Further, unless otherwise provided in this Agreement, the Definitive Documents not executed as of the Execution Date shall otherwise be consistent with this Agreement and in form and substance reasonably acceptable to the Company Parties and the Required Consenting Lenders; *provided*, that the Exit Financing Documents must be reasonably acceptable to all lenders under the Exit Financing Documents. Each Party agrees that it shall act in good faith and use and undertake all commercially reasonable efforts to negotiate and finalize the terms of the Definitive Documents that are not finalized as of the date hereof.

**Section 4. *Milestones.*** The Restructuring Transactions shall be implemented in accordance with the Milestones set forth in the Restructuring Term Sheet, which Milestones shall also include consummation of the Sale Transaction on or prior to the Outside Date. Each Milestone shall be subject to extension by mutual agreement between the Company Parties and the Required Consenting Junior Term Loan Lenders, in consultation with the Required Consenting First Lien Term Loan Lenders.

**Section 5. *Commitments of the Consenting Lenders.***

5.01. General Commitments, Forbearances, and Waivers.

(a) Except as set forth in Section 6 of this Agreement, during the Agreement Effective Period, each Consenting Lender (severally and not jointly) agrees, in respect of all of its Company Claims/Interests, to:

- (i) support the Restructuring Transactions, vote, and reasonably exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process

requiring voting or approval to which they are legally entitled to participate), in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions;

(ii) use commercially reasonable efforts to cooperate with and assist the Company Parties in obtaining additional support for the Restructuring Transactions from the Company Parties' other stakeholders;

(iii) negotiate in good faith and use commercially reasonable efforts to execute and deliver any appropriate additional agreements or add any appropriate additions or alternative provisions to address any legal, financial, or structural impediment that may arise that would prevent, hinder, impede, delay, or are necessary to effectuate the consummation of, the Restructuring Transactions;

(iv) negotiate in good faith and use commercially reasonable efforts to execute and implement the Definitive Documents that are consistent with this Agreement and to which it is required to be a party;

(v) take commercially reasonable efforts to negotiate in good faith regarding, as soon as reasonably practicable after the date hereof (and in any case, in compliance with the applicable Milestones), all Definitive Documents that are necessary to consummate the Restructuring Transactions;

(vi) use commercially reasonable efforts to oppose any party or person from taking any actions contemplated in Section 5.01(b) of this Agreement;

(vii) give any notice, order, instruction, or direction to the applicable Agents/Trustees necessary to give effect to the Restructuring Transactions; and

(viii) during the Agreement Effective Period, forbear from the exercise of its rights (including any right of set-off) or remedies under the Credit Agreements and any agreements contemplated thereby, as applicable, and under applicable U.S., Canadian, or any other foreign law or otherwise, in each case, with respect to any breaches, defaults, events of default, or potential defaults by the Company; *provided, however*, that any such forbearance shall not be construed as a waiver by any Party of any or all of such Party's rights and the Parties expressly reserve and all of their respective rights. Each Consenting Lender further agrees that if any applicable Agent takes any action inconsistent with any such Consenting Lender's obligations under this Agreement, such Consenting Lenders shall use commercially reasonable efforts to cause such Agent to cease and refrain from taking such actions.

(b) Except as set forth in Section 6 of this Agreement, during the Agreement Effective Period, each Consenting Lender (severally and not jointly) agrees, in respect of all of its Company Claims/Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(ii) object to, impede, or take any other action to oppose or interfere with the Consenting Junior Term Loan Lenders' right to credit bid, including any Claims under the Term DIP Facility; *provided* that any credit bid made by the Purchaser must be consistent in all respects with the terms of this Agreement and the Restructuring Term Sheet; *provided, further*, that, consistent with this Agreement and the Restructuring Term Sheet, in connection with the Sale Transaction the Consenting First Lien Term Loan Lenders and the First Lien Agent hereby consent to the credit bid of the Term DIP Claims, the 1.5 Lien Claims and the Second Lien Claims and the other transactions contemplated hereby;

(iii) propose, file, support, solicit or vote for any offer or indication of interest received from any Person, except in its capacity as a Consultation Party (as defined in the Bidding Procedures) under the Bidding Procedures Order; *provided* that during the Agreement Effective Period, if any Consenting Lender receives an unsolicited proposal or expression of interest regarding any Potential Bid, such Consenting Lender shall promptly: (A) notify the other Parties, and their respective counsel, of any such proposal or expression of interest, with such notice to include the material terms thereof, including the identity of the person or group of persons involved; and (B) furnish counsel to the other Parties with any unsolicited proposal or indication of interest or any other information that they receive relating to the foregoing; *provided further* that, following the notification of other Parties and their respective counsel of any unsolicited proposal or expression of interest, the Consenting First Lien Lenders shall not respond to such unsolicited proposal or expression of interest absent the consent of the Consenting Junior Term Loan Lenders (which consent shall not be unreasonably withheld);

(iv) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Restructuring Term Sheet;

(v) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 11 Cases, the CCAA Proceeding, this Agreement, the Restructuring Term Sheet, or the Restructuring Transactions contemplated hereunder or thereunder against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document, or as otherwise permitted under this Agreement;

(vi) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any Claims against or interests in the Company Parties including rights or remedies arising from or asserting or bringing any Claims under or with respect to the Credit Agreements that are inconsistent with this Agreement or the Definitive Documents; or

(vii) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code or the stay imposed by the CCAA Court in the CCAA Proceeding unless otherwise permitted under the Definitive Documents.

(c) In connection with the consummation of the Sale Transaction, the Consenting Junior Term Loan Lenders shall cause the Purchaser to assume the Existing Employment Agreements (as modified as provided in the APA) in accordance with the terms set forth in the Restructuring Term Sheet and the APA.

(d) Any requirement that any of the Consenting Lenders take any action pursuant to this Agreement will be deemed satisfied if such action is taken by such Consenting Lenders' Agent/Trustee.

5.02. Commitments with Respect to Chapter 11 Cases and CCAA Proceeding. During the Agreement Effective Period, each Consenting Lender, in respect of each of its Company Claims/Interests, will support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with any motion or other pleading or document filed by a Company Party in the Bankruptcy Court or the CCAA Court that is consistent with this Agreement, including Section 3.02 of this Agreement.

**Section 6. *Additional Provisions Regarding the Consenting Lenders' Commitments.***

6.01. Generally. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Lender to consult with any other Consenting Lender, the Company Parties, or any other party in interest in the Chapter 11 Cases or the CCAA Proceeding

(including any official committee and the United States Trustee); (b) impair or waive the rights of the Consenting Lenders under any applicable bankruptcy, insolvency, foreclosure, or similar proceeding, including appearing as a party in interest in any matter to be adjudicated in order to be heard concerning any matter arising in the Chapter 11 Cases or the CCAA Proceeding, in each case, so long as such act, action, consultation, or appearance is not in breach of or inconsistent with the Restructuring Transactions, the obligations of the Consenting Lenders and the Company Parties hereunder, or for the purpose of hindering, delaying, or preventing the consummation of the Restructuring Transactions; (c) limit the ability of any Consenting Lender to sell or enter into any transaction in connection with loans or any other Company Claims/Interests, other than as set forth in Section 9 of this Agreement; (d) constitute a waiver or amendment of any provisions of the Credit Agreements, subject to Section 5.02 of this Agreement; (e) prevent any Consenting Lender from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; and (f) require any Consenting Lender to incur any unexpected material unreimbursed expenses solely as a result of satisfying obligations under Section 5 of this Agreement.

**Section 7. *Commitments of the Company Parties.***

7.01. Affirmative Commitments. Except as set forth in Section 8 of this Agreement, during the Agreement Effective Period, the Company Parties agree to:

(a) support and take all steps necessary to consummate the Restructuring Transactions in accordance with this Agreement, including the applicable milestones set forth in Section 4 of this Agreement;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all commercially reasonable steps necessary to address any such impediment;

(c) use commercially reasonable efforts to obtain any and all required governmental, regulatory, environmental, and/or third-party approvals for the Restructuring Transactions;

(d) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements or documents to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(e) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from their other material stakeholders, and, to the extent the Company Parties receive any Joinders or Transfer Agreements, notify the Consenting Lenders of such Joinders and Transfer Agreements as reasonably promptly as practicable after receipt;

(f) provide counsel to any of the Consenting Lenders (each in their capacity as such) draft copies of documents that the Company Parties intend to file with Bankruptcy Court or the CCAA Court at least three (3) calendar days prior to the filing of such documents (or as soon as is reasonably practicable under the circumstances);

(g) take commercially reasonable efforts to complete the preparation of and negotiate in good faith regarding, as soon as reasonably practicable after the date hereof (and in any case, in compliance with the applicable Milestones) all Definitive Documents and any other documents that are necessary to consummate the Restructuring Transactions;

(h) timely file a formal objection to any motion filed with the Bankruptcy Court or the CCAA Court by any party seeking (i) the entry of an order (A) directing the appointment of an examiner with expanded powers or a trustee or receiver, (B) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing the Chapter 11 Cases or the CCAA Proceeding, or (D) directing the appointment of an equity committee, whether pursuant to section 1102(a)(2) of the Bankruptcy Code or otherwise, in the Chapter 11 Cases; or (ii) the entry of an order modifying or terminating the Company Parties' exclusive right to file and/or solicit acceptances of a plan of reorganization;

(i) use reasonable best efforts to provide to K&E all material executory contracts and unexpired leases of the Company Parties for the purposes of concluding which such executory contracts and unexpired leases the Company Parties intend (with the consent of or at the direction of the Consenting Junior Term Loan Lenders, as applicable) to assume and assign to the Purchaser pursuant to the terms of the Sale Order, the Sale Recognition Order and APA;

(j) pay the Consenting Lender Fees and Expenses in accordance with Section 14.21 of this Agreement;

(k) support the mutual releases set forth in the Restructuring Term Sheet and the APA;

(l) take commercially reasonable efforts to negotiate and enter into any amendments or modifications to any executory contract or unexpired lease upon the written direction of the Consenting Junior Term Loan Lenders, in a manner that is reasonably satisfactory to the Consenting Junior Term Loan Lenders as soon as reasonably practicable after receipt of such direction;

(m) upon reasonable request of any of the Consenting Lenders, inform the advisors to such Consenting Lenders as to: (i) the material business and financial (including liquidity) performance of the Company Parties; (ii) the status and progress of the Restructuring Transactions, including progress in relation to the negotiations of the Definitive Documents; and (iii) the status of obtaining any necessary or desirable authorizations (including any consents) from the Consenting Lenders, any competent judicial body, governmental authority, banking, taxation, supervisory, or regulatory body;

(n) inform counsel to each of the Consenting Lenders as soon as reasonably practicable after becoming aware of:

(i) (A) any matter or circumstance that they know, or suspect is likely, to be a material impediment to the implementation or consummation of the Restructuring Transactions; (B) any occurrence, or failure to occur, of any event that would be likely to cause (1) any representation or warranty of the Company Parties contained in this Agreement, the Restructuring Term Sheet, or the Definitive Documents to be untrue or inaccurate in any material respect, (2) any covenant of any of the Company Parties contained in this Agreement, the Restructuring Term Sheet, or the Definitive Documents not to be satisfied in any material respect, or (3) any condition precedent contained in this Agreement, the Restructuring Term Sheet, or the Definitive Documents to not occur or become impossible to satisfy; (C) any notice of any commencement of any involuntary insolvency proceedings, legal suit for payment of debt or from or by any person in respect of any Company Party; (D) a breach of this Agreement (including a breach by any Company Party); and (E) any representation or statement made or deemed to be made by them under this Agreement that is or proves to have been materially incorrect or misleading in any respect when made or deemed to be made; and

(ii) the receipt by the Company Parties of any written notice (A) from any third party alleging that the consent of such party is or may be required in connection with the transactions contemplated by the Restructuring Transactions; (B) from any governmental body in connection with this

Agreement, the Restructuring Term Sheet, or the Definitive Documents or the transactions contemplated by the Restructuring Transactions; (C) of any proceeding commenced, or, to the knowledge of the Company Parties, threatened against the Company Parties, relating to or involving or otherwise affecting in any material respect the transactions contemplated by the Restructuring Transactions; or (D) of alleged default, breach, waiver, or termination of this Agreement, the Restructuring Term Sheet, or the Definitive Documents.

(o) maintain their good standing under the Laws of the state, province, or other jurisdiction in which they are incorporated or organized; and

(p) operate their business in the ordinary course, taking into account the Restructuring Transactions.

7.02. Negative Commitments. Except as set forth in Section 8 and 14.12 of this Agreement, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring Transactions described in this Agreement or the APA;

(c) modify the Definitive Documents, in whole or in part, in a manner that is not consistent with this Agreement in all material respects;

(d) file any motion, pleading, or Definitive Documents with the Bankruptcy Court, CCAA Court, or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the APA;

(e) publicly announce its intention not to pursue the Sale Transaction;

(f) move for an order authorizing or directing the assumption or rejection of any executory contract or unexpired lease without the consent of the Consenting Junior Term Loan Lenders, which shall not be unreasonably withheld or conditioned;

(g) commence an avoidance action or other legal proceeding that challenges the validity, enforceability or priority of the obligations under the Credit Agreements;

(h) commence, support, or join any litigation or adversary proceeding against the Consenting Lenders;

(i) issue, sell, pledge, dispose of, or encumber any additional shares of, or any options, warrants, conversion privileges, or rights of any kind to acquire any shares of, any of its Equity Interests, including capital stock or limited liability company interests;

(j) amend or propose to amend its respective certificate or articles of incorporation, bylaws or comparable organizational documents in a manner inconsistent with this Agreement or the APA;

(k) split, combine, or reclassify any outstanding shares of its capital stock or other Equity Interests, or declare, set aside or pay any dividend or other distribution payable in cash, stock, property, or otherwise with respect to any of its Equity Interests;

(l) redeem, purchase, or acquire, or offer to acquire any of its Equity Interests, including capital stock or limited liability company interests;

(m) enter into any commitment or agreement with respect to debtor-in-possession financing, cash collateral, and/or exit financing other than the facilities contemplated under the DIP Facilities or the other Definitive Documents, this Agreement, or the Restructuring Term Sheet;

(n) incur or suffer to exist any indebtedness or debt, or guarantee any indebtedness or enter into any "keep well" or other agreement to maintain any financial condition of another person, except indebtedness existing and outstanding immediately before the Petition Date, trade payables, liabilities arising and incurred in the ordinary course of business, and indebtedness arising under the DIP Facilities;

(o) change materially its financial or tax accounting methods, except insofar as may have been required by a change in GAAP or applicable law, or revalue any of its material assets;

(p) enter into, adopt, or amend any management employment agreements or management compensation or incentive plans, or increase in any manner the compensation or benefits (including severance) of any directors, officers, or management level employees of any of the Company Parties or enter into or amend any existing employee agreements or any benefit or compensation plans, except in the ordinary course of business consistent with past practices in each case, or except as may be expressly permitted under this Agreement or the Restructuring Term Sheet;

(q) incur any liens or security interests, other than those existing immediately prior to the date hereof, those permitted under the DIP Facilities, or those granted under the DIP Facilities;

(r) transfer any asset or right of the Company Parties or any asset or right used in the business of the Company Parties to any person or Entity outside the ordinary course of business, except in each case with the consent of the Consenting Junior Term Loan Lenders; and

(s) engage in any merger, consolidation, disposition, acquisition, investment, dividend, incurrence of indebtedness or other similar transaction outside of the ordinary course of business other than the Restructuring Transactions.

**Section 8. *Additional Provisions Regarding Company Parties' Commitments.***

8.01. Notwithstanding anything to the contrary in this Agreement, each Company Party and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to:

(a) from the Agreement Effective Date until the Bid Deadline, seek, solicit, encourage, induce, consider, respond to, and facilitate Alternative Transaction Proposals consistent with the proposed Bidding Procedures Order;

(b) provide access to non-public information concerning any Company Party to any Entity or enter into Confidentiality Agreements or nondisclosure agreements, the terms of which shall be consistent with this Agreement; and

(c) enter into or continue discussions or negotiations with holders of Claims against or existing Equity Interests in a Company Party (including any Consenting Lender), any other party in interest (including, if applicable, in the Chapter 11 Cases (including any official committee, the United States Trustee, and the information officer appointed in the CCAA Proceeding)), or any other Entity regarding the Restructuring Transactions. The Company Parties shall provide counsel for the Consenting Lenders with updates on the status of and, if applicable, a copy of, any offer, proposal, or expression of interest regarding an Alternative Transaction Proposal within three (3) calendar days of the Company Parties' or their advisors' receipt of such offer, proposal, or expression of interest.

**Section 9. *Transfer of Interests and Securities.***

9.01. During the Agreement Effective Period, no Consenting Lender shall Transfer any ownership in any Company Claims/Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless (i) the transferee executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Lender and the transferee provides notice of such Transfer (including the amount and type of Company Claim/Interest Transferred) to counsel to the Company Parties and the Consenting Lender Advisors at or before the time of the proposed Transfer.

9.02. Upon compliance with the requirements of Section 9.01 of this Agreement, the transferee shall be deemed a Consenting Lender and the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Company Claims/Interests. Any Transfer in violation of Section 9.01 of this Agreement shall be void *ab initio*.

9.03. This Agreement shall in no way be construed to preclude the Consenting Lenders from acquiring additional Company Claims/Interests; *provided*, that (a) such additional Company Claims/Interests shall automatically and immediately upon acquisition by a Consenting Lender be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Lenders); and (b) such Consenting Lender must provide notice of such acquisition (including the amount and type of Company Claim/Interest acquired) to counsel to the Company Parties and the Consenting Lender Advisors within three (3) Business Days of such acquisition.

9.04. Notwithstanding anything to the contrary herein, to the extent a Company Party or another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

9.05. Notwithstanding anything to the contrary in this Section 9, the restrictions on Transfer set forth in this Section 9 shall not apply to the grant of any liens or encumbrances on any Company Claims/Interests in favor of a bank or broker-dealer holding custody of such Claims and Interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such Claims and Interests.

**Section 10. *Representations and Warranties of Consenting Lenders.*** Each Consenting Lender severally, and not jointly, represents and warrants that, as of the date such Consenting Lender executes and delivers this Agreement and as of the Closing Date:

(a) it is the beneficial or record owner of the face amount of the Company Claims/Interests or is the nominee, investment manager, or advisor for beneficial holders of the Company Claims/Interests

reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Interests other than those reflected in, such Consenting Lender's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 9 of this Agreement);

(b) it has the full power and authority to act on behalf of, vote, and consent to matters concerning, such Company Claims/Interests;

(c) such Company Claims/Interests are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, Transfer, or encumbrances of any kind, that would adversely affect in any way such Consenting Lender's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Interests as contemplated by this Agreement subject to applicable Law; and

(e) solely with respect to holders of Company Claims/Interests, (i) it is either (A) a qualified institutional buyer as defined in Rule 144A under the Securities Act, (B) not a U.S. person (as defined in Regulation S under the Securities Act), or (C) an institutional accredited investor (as defined in the Rules), (ii) any securities acquired by the Consenting Lender in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act, and (iii) has such knowledge and experience in financial and business matters to evaluate properly the terms and conditions of this Agreement and the Restructuring Transactions and is capable of evaluating the merits and risks of the securities to be acquired by it (if any) pursuant to the Restructuring Transactions and understands and is able to bear any economic risks with such investment.

**Section 11. *Mutual Representations, Warranties, and Covenants.*** Each of the Parties (severally and not jointly) represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, and as of the Closing Date:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the APA, the Bankruptcy Code, and the CCAA, no consent or approval is required by any other person or Entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association, or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant times) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreement or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

**Section 12. Termination Events.**

12.01. Consenting Lender Termination Events. This Agreement may be terminated: (a) with respect to the Consenting First Lien Term Loan Lenders, by the Required Consenting First Lien Term Loan Lenders; and (b) with respect to the Consenting Junior Term Loan Lenders, by the Required Consenting Junior Term Loan Lenders, in each case, by the delivery to the Company Parties and the Consenting Lenders of a written notice in accordance with Section 14.10 of this Agreement upon the occurrence of any of the following events:

(a) the breach in any material respect by a Company Party of any of the covenants of the Company Parties set forth in this Agreement that remains uncured for five (5) Business Days after such terminating Consenting Lender transmits a written notice in accordance with this Section 12.01 and Section 14.10 of this Agreement detailing any such breach;

(b) any representation or warranty made by a Company Party in this Agreement proves to have been incorrect in any material respect on the Agreement Effective Date (or such other applicable date with respect to a representation expressly made as to a period of time other than the Agreement Effective Date), or, to the extent such representation or warranty is already qualified by materiality, such representation or warranty proves to have been incorrect in any respect as of such date and remains uncured for ten (10) Business Days after such terminating Consenting Lender transmits a written notice in accordance with Section 14.10 of this Agreement detailing any such breach;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) Business Days after such terminating Consenting Lender transmits a written notice in accordance with Section 14.10 of this Agreement detailing any such issuance; *provided* that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(d) the Company files, amends, or modifies, or files a pleading seeking approval of, any Definitive Document or authority to amend or modify any Definitive Document, in a manner that is materially inconsistent with, or constitutes a material breach of, this Agreement and is adverse to such Consenting Lender seeking termination pursuant to this provision and such action remains uncured (to the extent curable) for five (5) Business Days after such terminating Consenting Lender transmits written notice of such amendment, modification, or pleading to the Company in accordance with Sections 14.10 of this Agreement (for the avoidance of doubt, no Party shall be permitted to terminate under this subsection unless its consent was required under Section 3.02);

(e) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Required Consenting Lenders), (i) converting one or more of the Chapter 11 Cases of a Company Party to cases under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, (iii) dismissing the Chapter 11 Cases, or (iv) rejecting this Agreement;

(f) the Bankruptcy Court enters a Final Order terminating the Company Parties' exclusive right to file and/or solicit acceptances of a plan of reorganization;

(g) except as necessary to implement the DIP Facilities and as authorized by the DIP Orders, or with the prior consent of the counsel to the Required Consenting Junior Term Loan Lenders (email shall

suffice), the Bankruptcy Court grants a Final Order terminating, annulling, or modifying the automatic stay (as set forth in section 362 of the Bankruptcy Code) with regard to any material asset of any Company Parties that would materially and adversely affect any of the Company Parties' ability to operate their business in the ordinary course;

(h) the Bankruptcy Court enters a Final Order pursuant to a motion filed or supported by the Company Parties or at the direct or indirect direction of the Company Parties authorizing or directing the assumption or rejection of any executory contract or unexpired lease other than in accordance with this Agreement, the Restructuring Term Sheet, or as otherwise consented to in writing by counsel to the Required Consenting Junior Term Loan Lenders (email shall suffice), which consent shall not be unreasonably withheld or conditioned;

(i) the commencement of an avoidance action or other legal proceeding by the Company Parties to challenge the validity, enforceability, or priority of the Credit Agreements or the obligations thereunder;

(j) the Definitive Documents are amended or otherwise modified so as to be materially inconsistent with this Agreement or the Restructuring Term Sheet;

(k) the Purchaser has failed, as of the date of the hearing on the Bidding Procedures Order, to obtain a firm commitment to replace the ABL DIP Facility and Revolving Credit Facility Claims (if applicable) on terms substantially consistent with the Revolving Credit Facility Credit Agreement.

(l) (i) the occurrence of a termination event under or the maturity date of the DIP Facilities, (ii) the termination or modification of any of the DIP Orders in a manner that is inconsistent with the Restructuring Term Sheet or the DIP Credit Agreements; (iii) the termination or modification of any order or agreement permitting the use of cash collateral in the Chapter 11 Cases or the CCAA Proceeding, without the consent of the affected Required Consenting Lenders; or (iv) the occurrence of an Event of Default under the DIP Credit Agreements that shall not have been cured within any applicable grace periods or waived pursuant to the terms of the DIP Credit Agreements, and subject to the rights set forth in the Interim DIP Order and the Final DIP Order of certain parties to contest whether a Termination Event (as defined in the Interim DIP Order and the Final DIP Order, as applicable) has occurred;

(m) if the Disclosure Schedules, in form and substance reasonably acceptable to the Purchaser, have not been completed three (3) Business Days prior to the hearing on the Bidding Procedures Order;

(n) the failure by the Company Parties to satisfy or comply with any of their obligations under Section 14.21 of this Agreement, subject to any order of the Bankruptcy Court regarding the fees and expenses contemplated to be paid by such Section 14.21 of this Agreement;

(o) the Company Parties retain any new director, executive officers or members of management or modify the terms of any Existing Employment Agreement with directors, executive officers or members of management without the consent of the Required Consenting Junior Term Loan Lenders;

(p) the Company Parties shall not have complied with any of the Milestones (unless such Milestone is waived, modified, extended, or amended in accordance with Section 4, Section 13, or the Restructuring Term Sheet of this Agreement);

(q) the Sale Transaction has not been consummated on or prior to the Outside Date in accordance with the terms set forth in the APA;

(r) the failure of the Company Parties to pay any interest or other amounts due and owing under the First Lien Term Loan Facility or in accordance with the DIP Orders;

(s) the Company Parties shall have terminated, amended, amended and restated, modified, or supplemented (i) any of their material executory contracts or unexpired leases in a manner that is not acceptable to the Consenting Junior Term Loan Lenders or (ii) any other material agreement contemplated to impose obligations on the Company Parties and/or the Purchaser on less than five (5) Business Days' notice to the Consenting Junior Term Loan Lenders or in a manner that is not acceptable to the Consenting Junior Term Loan Lenders; or

(t) the Restructuring Transactions are not consummated in accordance with the terms of this Agreement or the Restructuring Term Sheet.

12.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 14.10 of this Agreement upon the occurrence of any of the following events:

(a) the breach by one or more of the Consenting Lenders of any of the undertakings, representations, warranties, or covenants of the Consenting Lenders set forth herein in any material respect that remains uncured for a period of five (5) Business Days after the receipt of written notice of such breach pursuant to Section 14.10 of this Agreement, but only if the non-breaching Consenting Lenders hold less than 66.67% of the aggregate of the First Lien Claims, the 1.5 Lien Claims, and the Second Lien Claims,;

(b) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions in a way that cannot be reasonably remedied by the Company Parties subject to the reasonable satisfaction of the Required Consenting Lenders and (ii) remains in effect for thirty (30) Business Days after such terminating Company Party transmits a written notice in accordance with Section 14.10 of this Agreement detailing any such issuance; *provided* that this termination right shall not apply to or be exercised by any Company Party if any Company Party sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement;

(c) if the board of directors, officers or members of any Company Party, each in their capacity as such, determines in good faith based on the advice of external counsel, that (i) proceeding with the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties, or (ii) an Alternative Transaction Proposal is more favorable than the Restructuring Term Sheet and continued support of the Restructuring Term Sheet would be inconsistent with the exercise of its fiduciary duties; *provided*, however, that the Company Parties shall promptly notify each of the Consenting Lenders (and in any event within two (2) Business Days following any such determination); or

(d) the Restructuring Transactions are not consummated in accordance with the terms of this Agreement or the Restructuring Term Sheet.

12.03. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Required Consenting Lenders; and (b) each Company Party.

12.04. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately upon the occurrence of the Closing Date.

12.05. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or causes of action and any rights and remedies available under the Credit Agreements or any ancillary documents or agreements thereto. Nothing in this Agreement shall be construed as prohibiting a Company Party or any of the Consenting Lenders from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of any Company Party or the ability of any Company Party to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Lender, and (b) any right of any Consenting Lender, or the ability of any Consenting Lender, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Company Party or other Consenting Lender, subject in each case to the mutual releases by and between the Parties contemplated to occur upon the occurrence of the Closing Date. No purported termination of this Agreement shall be effective under this Section 12.05 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement.

**Section 13. Amendments and Waivers.**

(a) This Agreement and any exhibits or schedules hereto (including the Restructuring Term Sheet) may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 13.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by: (a) each Company Party and (b) the following Parties, solely with respect to any modification, amendment, waiver, or supplement that materially and adversely affects the rights of such Parties and unless otherwise specified in this Agreement and in such Parties' sole discretion: (i) the Required Consenting First Lien Term Loan Lenders; (ii) the Required Consenting 1.5 Lien Term Loan Lenders; and (iii) the Required Consenting Second Lien Term Loan Lenders; *provided, however*, that any change to Section 12.01 of this Agreement shall require the affirmative consent of each of the Required Consenting Lenders. For the avoidance of doubt, any change in the economic treatment provided to, or economic terms affecting, any Party's interests and/or modification, amendment, waiver or supplement that purports to change any of the Parties' consent rights under this Agreement shall constitute a material adverse change with respect to that particular Party's interests for purposes of this Section 13. Any change to this Section 13 or to the Outside Date shall require the affirmative consent of the Company Parties and each of the Required Consenting Lenders. Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 13 shall be ineffective and void *ab initio*.

(c) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power, or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

**Section 14. *Miscellaneous.***

14.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

14.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

14.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

14.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

14.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in the Bankruptcy Court, and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party hereto.

14.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

14.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Lenders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective

in regard to the interpretation hereof. The Company Parties and the Consenting Lenders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

14.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or Entity.

14.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to a Company Party, to:

Jack Cooper Investments, Inc.  
630 Kennesaw Due West Road  
Kennesaw, Georgia 30152  
Attention: Mr. Theo Ciupitu, General Counsel & Executive Vice President  
E-mail address: tciupitu@jackcooper.com

with copies to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Brian S. Hermann  
Kelley A. Cornish  
John T. Weber  
E-mail address: bhermann@paulweiss.com  
kcornish@paulweiss.com  
jweber@paulweiss.com

(b) if to a Consenting First Lien Term Loan Lender, to:

Cerberus Business Finance Agency, LLC  
875 Third Avenue  
New York, New York 10022  
Attention: Eric Miller  
Email address: emiller@cerberuscapital.com

with copies to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Eliot L. Relles  
Adam C. Harris  
E-mail address: eliot.relles@srz.com  
adam.harris@srz.com

(c) if to a Consenting Junior Term Loan Lender, to:

Solus Alternative Asset Management LP  
410 Park Avenue, 11th Floor  
New York, New York 10022  
Attention: Tom Higbie  
Jon Zinman  
Stephen Blauner  
Christian Blake  
Email address: thigbie@soluslp.com  
jzinman@soluslp.com  
sblauner@soluslp.com  
cblake@soluslp.com

with copies to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attention: Marc Kieselstein  
Alexandra Schwarzman  
E-mail address: mkieselstein@kirkland.com  
alexandra.schwarzman@kirkland.com

and

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Jonathan S. Henes  
E-mail address: jhenes@kirkland.com

Any notice given by delivery, mail, courier, or email shall be effective when received.

14.11. Independent Due Diligence and Decision Making. Each Consenting Lender hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial, and other conditions, and prospects of the Company Parties and that it has been represented by counsel or other advisors (or has had ample opportunity to seek representation or advice from counsel or other advisors) in connection with this Agreement and the Restructuring Transactions

14.12. Fiduciary Duties. Notwithstanding any other provision in this Agreement to the contrary, nothing in this Agreement shall require any Company Party, nor any board of directors, officers or members of any Company Party, each in their capacity as such, to take or refrain from taking any action pursuant to this Agreement (including, without limitation, terminating this Agreement), to the extent such Company Party or board of directors reasonably determines in good faith, based on the advice of external counsel, would be inconsistent with its fiduciary obligations under applicable law, in which case, the Company Parties shall promptly notify each of the Consenting Lenders and the Consenting Lender Advisors (and in any event within two (2) Business Days following any such determination) and may terminate this Agreement in accordance with Section 12.02 hereof. The Company Parties hereby acknowledge and agree

that, as of the Agreement Effective Date, the Company Parties' entry into this Agreement does not violate, and is consistent with, the fiduciary duties of the Company Parties' directors, managers, or officers, as applicable.

14.13. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

14.14. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

14.15. Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

14.16. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

14.17. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

14.18. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

14.19. Capacities of Consenting Lenders. Each Consenting Lender has entered into this agreement on account of all Company Claims/Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Interests.

14.20. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, including a written approval by the Company Parties or the Required Consenting Lenders, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

14.21. Transaction Expenses.

(a) During the Agreement Effective Period, the Company Parties shall promptly pay in cash all reasonable and documented fees and expenses (the “Consenting Lender Fees and Expenses”) of (i) the Consenting Lender Advisors, including K&E, Bennett Jones, PJT, and (ii) any consultants or other professionals retained by the Consenting Lenders in connection with the Company Parties or the Restructuring Transactions, in accordance with the Credit Agreements and any engagement or fee letters of such consultant or professional signed by the relevant Consenting Lenders and the Company Parties. Except as otherwise provided in this Section 14.21, the Consenting Lender Fees and Expenses shall include all reasonable and documented fees and expenses incurred from the commencement of the applicable engagement through the effective date of a termination of this Agreement (including any success fees contemplated by the applicable engagement or fee letters), but solely with respect to any amounts earned, due, and payable prior to the effective date of termination of this Agreement; *provided, however*, that nothing in this Section 14.21(a) shall negate or waive any obligation of the Company Parties to pay Consenting Lender Fees and Expenses under the applicable Credit Agreements or the Expense Reimbursement (as defined in the Restructuring Term Sheet), consistent with the Restructuring Term Sheet. The Consenting Lender Fees and Expenses shall be payable without further order of, or application to, the Bankruptcy Court or CCAA Court by any Consenting Lender Advisor.

(b) The Company Parties acknowledge that the agreements contained in this Section 14.21 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Consenting Lenders would not have entered into (as applicable) this Agreement or the Restructuring Term Sheet. The obligations set forth in this Section 14.21 are in addition to, and do not limit, the Company Parties’ other obligations under this Agreement.

(c) Notwithstanding anything to the contrary in this Section 14.21, if this Agreement is terminated consistent with Section 12 of this Agreement, any accrued and unpaid Consenting Lender Fees and Expenses shall be subject to the prior payment in full of the obligations under the First Lien Term Loan Facility.

14.22. Relationship Among Parties. It is understood and agreed that, except as expressly provided in this Agreement, and solely with respect to this Agreement, none of the Consenting Lenders (a) have any duty of trust or confidence in any kind or form with any other Party; (b) have or owe any other duties (fiduciary or otherwise) whatsoever to any other Party; or (c) have commitments to any of the other Parties. In this regard, it is understood and agreed that subject to the terms and conditions of this Agreement, the Consenting Lenders may trade in the loans or other debt or equity securities of the Company Parties, subject to applicable securities laws and the terms of this Agreement. No prior history, pattern or practice of sharing confidences among or between the Parties shall in any way affect or negate this understanding and agreement. Notwithstanding anything in this Agreement to the contrary, the duties and obligations of the Consenting Lenders under this Agreement shall be several, not joint.

14.23. Survival. Notwithstanding the termination of this Agreement pursuant to Section 12 of this Agreement, the agreements and obligations of the Parties in Sections 8.01, 12.05, 14.01, 14.02, 14.04, 14.05, 14.06, 14.07, 14.08, 14.09, 14.10, 14.14, 14.15, 14.16, 14.17, 14.18, 14.21 (for purposes of enforcement of obligations accrued through the date of termination of this Agreement), 14.22, and 14.23 of this Agreement shall survive such termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**JACK COOPER INVESTMENTS, INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

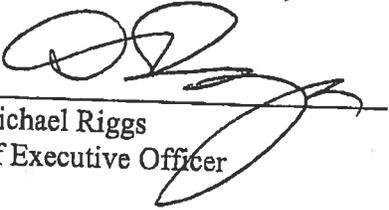
**JACK COOPER VENTURES, INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

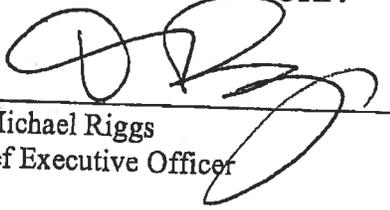
**JACK COOPER DIVERSIFIED, LLC**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

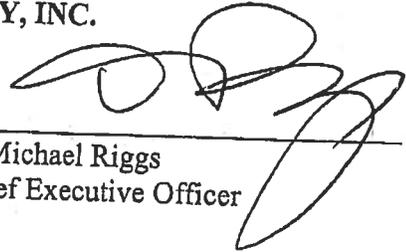
**JACK COOPER ENTERPRISES, INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**JACK COOPER HOLDINGS CORP.**

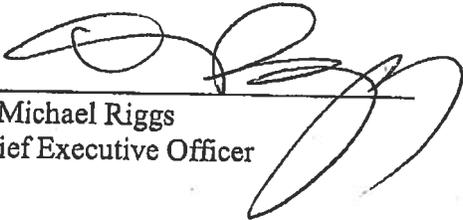
By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**JACK COOPER TRANSPORT  
COMPANY, INC.**

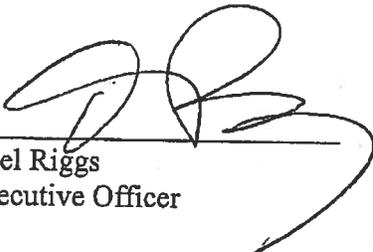
By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

*[Signature Page to Restructuring Support Agreement]*

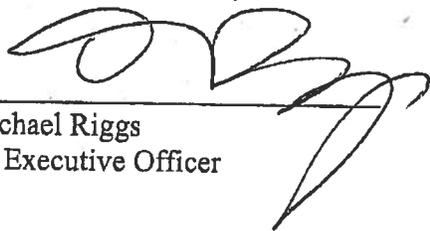
**AUTO HANDLING CORPORATION**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

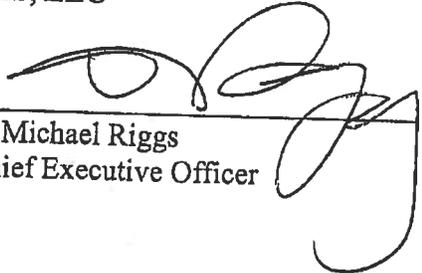
**CTEMS, LLC**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

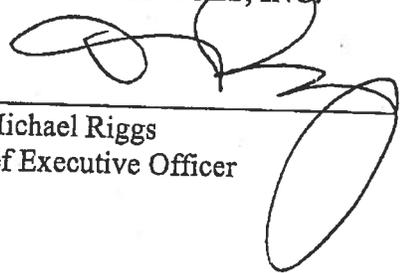
**JACK COOPER LOGISTICS, LLC**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

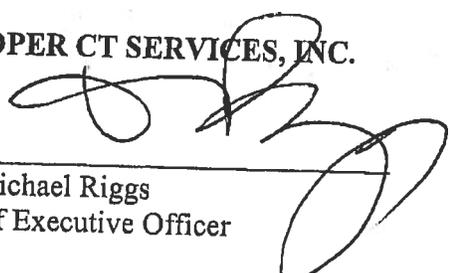
**AUTO & BOAT RELOCATION  
SERVICES, LLC**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**AXIS LOGISTIC SERVICES, INC.**

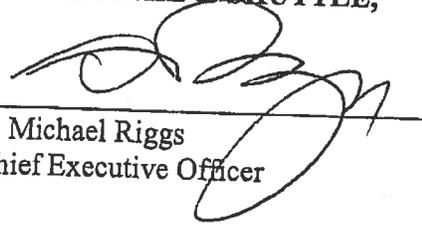
By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**JACK COOPER CT SERVICES, INC.**

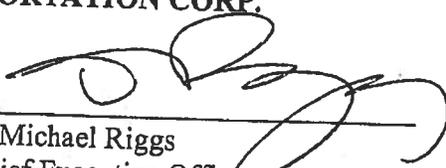
By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

*[Signature Page to Restructuring Support Agreement]*

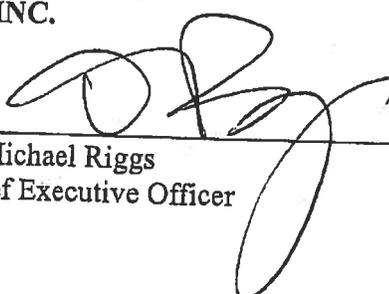
**JACK COOPER RAIL & SHUTTLE,  
INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**NORTH AMERICAN AUTO  
TRANSPORTATION CORP.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

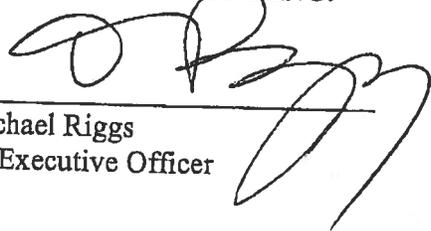
**JACK COOPER TRANSPORT  
CANADA INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

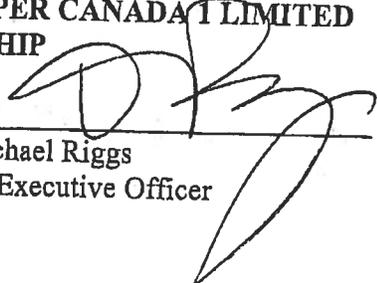
**JACK COOPER CANADA GP 1 INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

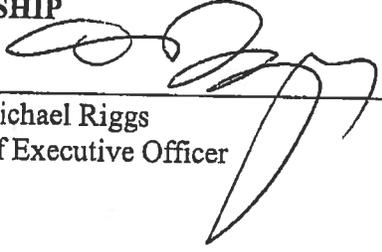
**JACK COOPER CANADA GP 2 INC.**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**JACK COOPER CANADA I LIMITED  
PARTNERSHIP**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

**JACK COOPER CANADA 2 LIMITED  
PARTNERSHIP**

By:   
Name: T. Michael Riggs  
Title: Chief Executive Officer

*[Signature Page to Restructuring Support Agreement]*

*[Consenting Lender Signature Pages Redacted]*

**Exhibit A**

**Restructuring Term Sheet**

**JACK COOPER INVESTMENTS, INC., ET AL.  
SUMMARY OF PRINCIPAL TERMS OF RESTRUCTURING**

**AUGUST 6, 2019**

This term sheet (this "Term Sheet")<sup>1</sup> sets forth a summary of the principal terms of a restructuring (the "Restructuring") of the existing debt and other obligations of Jack Cooper Investments, Inc. and its subsidiaries (collectively, the "Company"). Subject in all respects to the terms of this Term Sheet and the Restructuring Support Agreement (the "RSA") to which this Term Sheet is attached as Exhibit A, the Restructuring will be implemented through the commencement of voluntary cases by the Debtors (as defined below) under chapter 11 (the "Chapter 11 Cases") of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") and recognition proceedings of the Canadian Debtors (defined below) in respect of the Chapter 11 Cases (the "CCA Proceeding") in the Ontario Superior Court of Justice (Commercial List) (the "CCA Court") pursuant to Part IV of the Companies' Creditors Arrangement Act (the "CCA").

**THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN, IT BEING UNDERSTOOD THAT SUCH A SOLICITATION, IF ANY, ONLY WILL BE MADE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND/OR OTHER APPLICABLE LAWS.**

**THIS TERM SHEET DOES NOT ADDRESS ALL MATERIAL TERMS THAT WOULD BE REQUIRED IN CONNECTION WITH THE RESTRUCTURING. THE TRANSACTIONS CONTEMPLATED BY THIS TERM SHEET ARE SUBJECT TO NEGOTIATION AND EXECUTION OF DEFINITIVE DOCUMENTATION, WHICH SHALL EACH BE IN FORM AND SUBSTANCE CONSISTENT WITH THIS TERM SHEET AND ACCEPTABLE TO SOLUS ALTERNATIVE ASSET MANAGEMENT LP ("SOLUS") AND THE COMPANY. NOTHING CONTAINED IN THIS TERM SHEET SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE ENTRY INTO DEFINITIVE DOCUMENTATION ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO. FURTHER, THE TRANSACTIONS CONTEMPLATED BY THIS TERM SHEET ARE SUBJECT TO THE COMPLETION OF DUE DILIGENCE AND WILL BE SUBJECT TO AGREED-UPON CONDITIONS TO BE SET FORTH IN SUCH DEFINITIVE DOCUMENTS. NO BINDING OBLIGATIONS WILL BE CREATED BY THIS TERM SHEET UNLESS AND UNTIL SIGNATURE PAGES TO THE RSA ARE EXECUTED AND DELIVERED BY ALL APPLICABLE PARTIES.**

**THIS TERM SHEET HAS BEEN PRODUCED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY. IT SHALL NOT BE USED AS EVIDENCE IN ANY LITIGATION, CONTESTED MATTER, OR ADVERSARY PROCEEDING, AND IS SUBJECT TO THE PROVISIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE RULES UNDER FEDERAL AND STATE LAW. THIS TERM SHEET AND THE INFORMATION CONTAINED HEREIN ARE STRICTLY CONFIDENTIAL AND SHALL NOT BE SHARED WITH ANY OTHER PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF SOLUS AND THE COMPANY.**

**TO THE EXTENT THAT ANY PROVISION OF THIS TERM SHEET IS INCONSISTENT WITH THE RSA, THE TERMS OF THIS TERM SHEET WITH RESPECT TO SUCH PROVISION SHALL CONTROL.**

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<sup>1</sup> Capitalized terms used but undefined herein shall have the meanings ascribed to them in the remainder of this Term Sheet or the RSA, as applicable.

<b><u>Material Terms of the Restructuring</u></b>	
<b>Proposed Filing Entities</b>	<p>Jack Cooper Investments, Inc. and its direct and indirect subsidiaries listed below shall be debtors and debtors in possession in the Chapter 11 Cases: Auto &amp; Boat Relocation Services LLC; Auto Handling Corporation; Axis Logistic Services, Inc.; CTEMS, LLC; Jack Cooper Canada 1 Limited Partnership; Jack Cooper Canada 2 Limited Partnership; Jack Cooper Canada GP 1 Inc.; Jack Cooper Canada GP 2 Inc.; Jack Cooper CT Services, Inc.; Jack Cooper Diversified, LLC; Jack Cooper Enterprises, Inc.; Jack Cooper Holdings Corp.; Jack Cooper Logistics, LLC; Jack Cooper Rail and Shuttle, Inc.; Jack Cooper Transport Canada, Inc.; Jack Cooper Transport Company, Inc.; Jack Cooper Ventures, Inc.; North American Auto Transportation Corp. (the foregoing entities collectively, the “<u>Debtors</u>”).</p> <p>The CCAA Proceeding shall be commenced by Jack Cooper Transport Canada Inc.; Jack Cooper Canada 1 Limited Partnership; Jack Cooper Canada 2 Limited Partnership; Jack Cooper Canada GP 1 Inc.; and Jack Cooper Canada GP 2 Inc. (collectively, the “<u>Canadian Debtors</u>”). Additional foreign proceedings ancillary to the applicable Chapter 11 Cases or other proceedings seeking recognition of aspects of the Chapter 11 Cases may also be commenced by certain of the Debtors, with the consent of the Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned.</p>
<b>Purchaser</b>	<p>The purchaser shall be a newly formed entity formed by or on behalf of an investment vehicle affiliated with Solus (together with the “purchaser(s)” described in the next sentence, the “<u>Purchaser</u>”). The APA and the related Sale Order (each as defined below) shall permit the Purchaser to designate one or more of its affiliates as a “purchaser” thereunder with respect to any particular assets.</p>
<b>Implementation</b>	<p>Subject to the terms and conditions set forth in the RSA, the Restructuring shall be implemented pursuant to consummation of a sale of all, or substantially all, of the Debtors’ assets to the Purchaser pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the CCAA and the terms of an asset purchase agreement (the “<u>APA</u>”) attached hereto as <b>Exhibit 1</b> (the transaction contemplated thereunder, the “<u>Sale Transaction</u>”).</p> <p>The Purchaser shall serve as a stalking horse bidder for the Sale Transaction. The APA shall be entered into by the Purchaser and Debtors prior to the commencement of the Chapter 11 Cases and the CCAA Proceedings (or as soon as practicable after the Petition Date, but in all circumstances prior to the hearing on the Sale and Bidding Procedures Motion), and shall remain subject to higher and better offers that may be obtained by the Debtors in connection with customary bid procedures (“<u>Bidding Procedures</u>”) acceptable to the Debtors, the Purchaser and RSA Parties, and as approved by an order of the Bankruptcy Court (the “<u>Bidding Procedures Order</u>”). On the Petition Date, the Debtors shall file a motion with the Bankruptcy Court seeking approval of the Sale Transaction and Bidding Procedures (collectively, the “<u>Sale and Bidding Procedures Motion</u>”), which motion and related papers will be acceptable to the Purchaser, the RSA Parties and the Debtors. The Sale and Bidding Procedures Motion shall seek a hearing to approve the Bidding Procedures as promptly as permitted under the applicable local bankruptcy rules, but without any requirement to shorten the applicable notice periods.</p> <p>The Bidding Procedures shall provide that only bids that comply in all material</p>

respects with the Bidding Procedures shall be considered by the Sellers (each such bid, a "Qualified Bid"). Moreover and for the avoidance of doubt, (i) Purchaser's offer to purchase the Acquired Assets (as defined in the APA) pursuant to the APA shall be a Qualified Bid for all purposes related to the Bidding Procedures and (ii) in the event that any other Qualified Bid is submitted, the Debtors shall conduct an auction for the Acquired Assets (the "Auction") and the Debtors, subject to Bankruptcy Court and CCAA Court approval, shall, in consultation with any relevant consultation parties, select the highest or otherwise best Qualified Bid.

The Acquired Assets will include, without limitation, all Avoidance Actions (as defined in the APA) and any other causes of action available to any of the Debtors or their estates to the extent they either (i) relate to the Acquired Assets, Assigned Contracts or Assumed Liabilities (as defined in the APA), or (ii) are against any of the Debtors, Purchaser, any of the directors, officers, managers, employees, shareholders, members or advisors of the Debtors, or any lenders or agents under the DIP Credit Agreements, the First Lien Term Loan Credit Agreement, the Revolving Credit Facility Credit Agreement, the Junior Credit Agreements or the Exit Facilities, and all such avoidance actions and causes of action will be waived and released by Purchaser on the Closing Date.

Upon consummation of the Sale Transaction, the Purchaser shall acquire the Acquired Assets free and clear of any and all pledges, options, charges, liabilities, liens, claims, encumbrances, successor liability (but, with respect to the Canadian Debtors, to the extent permitted by applicable Canadian law) or security interests, subject to certain exceptions identified in the APA, including the First Lien Term Loan Facility or the Exit First Lien Term Loan Facility, as applicable. The order entered by the Bankruptcy Court approving the Sale Transaction (the "Sale Order") shall include (i) language reasonably acceptable to the Purchaser, the Required Consenting Lenders and Debtors authorizing the consummation of the Sale Transaction "free and clear" of the Excluded Liabilities (as defined in the APA), and (ii) language acceptable to the Purchaser confirming that none of Solus, any of its managed funds or accounts, any of its investors shareholders, owners, representatives, officers, limited or general partners, directors, agents or affiliates, the Purchaser, any of the Purchaser's subsidiaries or affiliates, or any of the Purchaser's respective "controlled group" members shall have any current or future liability or obligation to (including withdrawal liability), or obligation to contribute to, or with respect to, any U.S. multiemployer pension plans to which the Company currently contributes or has the obligation to contribute (the "MEPPs"), or previously contributed or had an obligation to contribute, or otherwise has any liability or obligation, including the Central States, Southeast and Southwest Areas Pension Plan (the "Central States Plan"), except as otherwise provided in the MEPP Term Sheet (defined below) to the extent the Teamsters National Auto Transporters Industry Negotiating Committee (the "IBT"), the International Association of Machinists and Aerospace Workers (the "IAM"), and representatives of the Central States Plan consent to the terms of the RSA and the Sale Transaction.

The Canadian Debtors shall obtain entry of the Sale Recognition Order by the CCAA Court recognizing and giving effect to the Sale Order and vesting the Acquired Assets of the Canadian Debtors' "free and clear" of the Excluded Liabilities (as defined in the APA).

The Purchase Price for the Acquired Assets shall include a cash component (i) in an amount sufficient to satisfy the reasonable and documented fees and expenses incurred by estate professionals ("Estate Professionals") to the extent such fees and

	<p>expenses (a) are accrued and unpaid as of the Closing Date, and (b) with respect to any transaction-based fees, have been approved by the Bankruptcy Court in connection with such professional's retention application (the "<u>Professional Fee Amount</u>"), which shall be funded into an escrow account (the "<u>Professional Fee Escrow Account</u>") on the Closing Date and maintained in trust for the Estate Professionals and shall not be considered property of the Debtors' estates or the Purchaser; <i>provided</i>, that the Purchaser shall have a reversionary interest in the excess, if any, of the amount in the Professional Fee Escrow Account over the aggregate amounts to be paid to the Estate Professionals; and (ii) in the amount of \$250,000 to fund the wind down and dissolution of the Debtors' estates following the Closing Date, which shall be funded into an escrow account on the Closing Date.</p>
<p><b>Credit Bid and Bid Protections</b></p>	<p>Notwithstanding any provision of any existing intercreditor agreement to the contrary, the Purchaser shall have the right to "credit bid" all (or such lesser portion as it may determine under each of the Junior Credit Agreements) of the 1.5 Lien Obligations, the Second Lien Obligations, and Term DIP Facility Obligations (each as defined below), the aggregate principal amount of which shall be no less than \$351,928,904 as of the Petition Date. Any credit bid made by the Purchaser must be consistent in all material respects with the terms of this Term Sheet and the RSA.</p> <p>The Bidding Procedures Order shall provide that (i) in the event the Purchaser is not the prevailing purchaser of the Debtors' assets or (ii) as otherwise set forth in the APA, the Debtors shall pay in cash all reasonable and documented fees and expenses of the Purchaser in connection with the Sale Transaction (such payment obligations, the "<u>Expense Reimbursement</u>"). The claim of the Purchaser in respect of the Expense Reimbursement shall constitute an allowed superpriority administrative expense claim against each of the Debtors under sections 503 and 507(b)(2) of the Bankruptcy Code, senior in respect of lien priority and right to payment of all other administrative expense claims of the Debtors, but subject to the Carve-Out, the CCAA Priority Charges (each as defined in the DIP Credit Agreements), and prior payment in full of the First Lien Term Loan Facility.</p> <p>The Debtors shall pay the Expense Reimbursement by wire transfer of immediately available funds to an account designated by the Purchaser within one (1) Business Day<sup>2</sup> of the consummation of an Alternative Restructuring Proposal.</p>
<p><b>New Money Investment</b></p>	<p>Solus (in its capacity as a DIP Lender, the "<u>Term DIP Lender</u>") shall advance up to \$15 million in the form of a term loan (the "<u>Term DIP Facility</u>" and the credit agreement governing the Term DIP Facility, the "<u>DIP Term Credit Agreement</u>") to be provided in addition to the debtor-in-possession financing to be provided by Wells (in such capacity, the "<u>ABL DIP Lender</u>" and together with the Term DIP Lender, the "<u>DIP Lenders</u>"), which shall be in the form of a "rollover" DIP on terms materially consistent with the Revolving Credit Facility (the "<u>ABL DIP Facility</u>," and together with the Term DIP Facility, the "<u>DIP Facilities</u>"). As more fully set forth in the DIP Term Credit Agreement, the Term DIP Facility shall be available to the Debtors upon entry of the order of the Bankruptcy Court approving the DIP Facilities on an interim basis (the "<u>Interim DIP Order</u>") in an amount not to exceed \$10 million, with subsequent draws of up to an additional \$5 million subject, in each case, to the applicable conditions set forth in the DIP Credit Agreements; <i>provided that</i> any amounts funded under the Term DIP Facility in</p>

<sup>2</sup> "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

	<p>excess of \$10 million shall be conditioned upon ratification of the CBAs consistent with the CBA Term Sheet (defined below), this Term Sheet, the RSA, and the APA, including entry into a definitive agreement with the Central States Plan reflecting the terms of the CSPF Term Sheet.</p> <p>The DIP Facilities shall be subject to customary conditions precedent.</p> <p>In the event the Purchaser has less than \$20 million in Liquidity (which is to be calculated after giving effect to all amounts paid or payable at the closing of the Sale Transaction, including the Professional Fee Amount funded into the Professional Fee Escrow, other than the payment of trade or similar payables assumed by the Purchaser and payable in the ordinary course of business, and otherwise consistent with the definition in the DIP Credit Agreements) in the aggregate as of the date of the closing of the Sale Transaction (the "<u>Closing Date</u>"), Solus shall satisfy on the Closing Date any shortfall in Liquidity so that Liquidity is not less than \$20 million; <i>provided</i>, that any indebtedness incurred to fund any shortfall in Liquidity shall be junior to the Exit First Lien Term Loan Facility, and consistent with the Exit Financing Documents.</p>
<p><b>DIP Facilities</b></p>	<p>On the Petition Date, the Debtors shall file a motion with the Bankruptcy Court to approve the DIP Facilities (the "<u>DIP Motion</u>"), which motion and related papers shall be acceptable to the agents under the DIP Facilities, the DIP Lenders, the Required Consenting Lenders, and the Company. The DIP Motion shall seek a hearing to approve the DIP Facilities as promptly as permitted under the applicable local Bankruptcy Court and local jurisdictional rules.</p>
<p><b>First Lien Term Loan Interest Payments</b></p>	<p>Interest shall be paid on the First Lien Term Loan Facility as it becomes due pursuant to the terms of the First Lien Term Loan Credit Agreement (defined below) during the pendency of the Chapter 11 Cases at the non-default rate. For the avoidance of doubt, the First Lien Term Loans shall accrue additional interest at the default rate, which shall comprise a portion of the First Lien Obligations, pending the consummation of the Sale Transaction; <i>provided</i>, any accrued but unpaid default rate interest in excess of the non-default rate interest shall be waived upon the Closing Date.</p>
<p><b><u>Funded Indebtedness</u></b></p>	
<p><b>ABL DIP Facility</b></p>	<p>On the Closing Date, it is anticipated that the obligations outstanding under the credit agreement governing the ABL DIP Facility (the "<u>ABL DIP Credit Agreement</u>" and together with the Term DIP Credit Agreement, the "<u>DIP Credit Agreements</u>") shall be modified and assumed (or refinanced) by the Purchaser (or an affiliate thereof) in the form of an exit revolving credit facility (the "<u>Exit Revolving Facility</u>"), by and among the Purchaser (or an affiliate thereof), as borrower, and the Revolver Lenders, on terms substantially consistent with the existing Revolving Credit Facility, including, for the avoidance of doubt, the formula for calculating the Domestic Borrowing Base and Canadian Borrowing Base (each as defined in the Revolving Credit Facility Credit Agreement), which formulas shall remain unmodified, with an attendant prohibition on the implementation of reserves, for a twelve (12) month period following the Closing Date, and otherwise acceptable to the Debtors, the Purchaser, and Wells. It is anticipated that the Exit Revolving Facility shall have a maturity date of February 15, 2023 and a Closing Fee equal to 0.50% of the aggregate amount of the commitments under the Exit Revolving Facility. The Exit Revolving Facility shall also include (i) a minimum EBITDA covenant through fiscal year 2020 (tested</p>

	<p>monthly on a cumulative basis and to reflect a 35% cushion to the model delivered prior to exit), which shall convert to a minimum springing (based on excess availability) TTM FCCR of 1.0x starting in fiscal year 2021, and (ii) cash dominion provisions substantially the same as those under the Revolving Credit Facility. The Exit Revolving Facility shall have lien priorities substantially the same as those under the Revolving Credit Facility Credit Agreement.</p> <p><u>“Revolving Credit Facility Credit Agreement”</u> means that certain Second Amended and Restated Credit Agreement, dated as of February 15, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time) among certain of the Debtors, Wells Fargo Capital Finance, LLC (<u>“Wells”</u>), as lead arranger, sole bookrunner, and administrative agent, and the banks, financial institutions, and other lenders party thereto (collectively with Wells, the <u>“Revolver Lenders”</u>).</p> <p><u>“Revolving Credit Facility”</u> means the revolving credit facility governed by the Revolving Credit Facility Credit Agreement.</p>
<p><b>Term DIP Facility</b></p>	<p>The principal amount outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the Term DIP Facility (the <u>“Term DIP Facility Obligations”</u>) shall be credit bid as part of the Purchase Price (as defined in the APA).</p>
<p><b>First Lien Term Loan</b></p>	<p>On the Closing Date, the obligations outstanding under that certain Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the <u>“First Lien Term Loan Credit Agreement”</u>) among certain of the Debtors, Cerberus Business Finance Agency, LLC (<u>“Cerberus”</u>), as agent, and the banks, financial institutions, and other lenders party thereto (the <u>“First Lien Term Loan Facility”</u> and the lenders and agent thereunder, the <u>“First Lien Lenders”</u>), including not less than \$188,650,000 in principal amount outstanding shall be modified and assumed by the Purchaser (or an affiliate thereof) in the form of an exit first lien term loan facility (the <u>“Exit First Lien Term Loan Facility”</u> and, collectively with the Exit Revolving Facility, the <u>“Exit Facilities”</u> and, the documentation setting forth the terms of the Exit Facilities, the <u>“Exit Financing Documents”</u>), and the Purchaser shall pay on the Closing Date all unpaid interest at the non-default rate accrued as of the Closing Date, fees, expenses, costs, and other charges arising under or related to the First Lien Term Loan Facility (together, with the outstanding principal on the First Lien Term Loan Facility, the <u>“First Lien Obligations”</u>) on terms reasonably acceptable to the Debtors, the Purchaser, and Cerberus and substantially consistent with the existing First Lien Term Loan Facility, and having lien priorities that are the same as those under the First Lien Term Loan Facility, modified as follows:</p> <ul style="list-style-type: none"> <li>(i) interest rate increase of 1.00%;</li> <li>(ii) a one-time mandatory prepayment of \$10 million on the date that is two years following the Closing Date, less any Excess Cash Flow prepayments made between the Closing Date and the date that is two years therefrom (and no other changes to amortization or excess cash flow sweep levels);</li> <li>(iii) First Lien Net Leverage Ratio and Fixed Charge Coverage Ratio (each as defined in the First Lien Term Loan Credit Agreement) and the maximum capital expenditures covenant shall each be amended to provide 25% cushions to the projections contained in the financial projections, which must be acceptable to the First Lien Lenders, to be provided to the</li> </ul>

	<p>lenders under the Exit First Lien Term Loan Facility in advance of the Closing Date;</p> <p>(iv) amendments to negative covenants and other covenants to be agreed among the Debtors, the Purchaser and the First Lien Lenders to permit the transactions contemplated by the Debtors' amended business plan and reflecting initiative; and</p> <p>(v) the maturity date under the Exit First Lien Term Loan Facility shall be no later than the maturity date under the Exit Revolving Facility.</p> <p>On the Closing Date, Cerberus and the administrative agent under the Exit Revolving Facility shall enter into a new intercreditor agreement.</p>
<b>1.5 Lien Term Loan</b>	<p>On the Closing Date, the obligations outstanding under that certain Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "<u>1.5 Lien Credit Agreement</u>") among certain of the Debtors, Wilmington Trust, National Association, as administrative and collateral agent (the "<u>1.5 Lien Agent</u>"), and the banks, financial institutions, and other lenders party thereto (the "<u>1.5 Lien Term Loan Facility</u>" and the lenders thereunder, the "<u>1.5 Lien Lenders</u>"), including approximately \$45,515,729 in principal amount outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the 1.5 Lien Term Loan Facility (the "<u>1.5 Lien Obligations</u>") shall be credit bid as part of the Purchase Price (as defined in the APA) and such 1.5 Lien Obligations shall be deemed fully satisfied.</p>
<b>Second Lien Term Loan</b>	<p>On the Closing Date, the obligations outstanding under that certain Credit Agreement, dated as of June 28, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "<u>Second Lien Term Loan Credit Agreement</u>" and together with the 1.5 Lien Credit Agreement, the "<u>Junior Credit Agreements</u>") among certain of the Debtors, Wilmington Trust, National Association, as administrative and collateral agent (the "<u>Second Lien Agent</u>"), and the banks, financial institutions, and other lenders party thereto (the "<u>Second Lien Term Loan Facility</u>" and the lenders thereunder, the "<u>Second Lien Lenders</u>"), including approximately \$291,413,174 in principal amount outstanding, plus all unpaid interest, fees, expenses, costs, and other charges arising under or related to the Second Lien Term Loan Facility (the "<u>Second Lien Obligations</u>") may be credit bid in the amount up to \$241,413,174 as part of the Purchase Price. To the extent that a portion of the Second Lien Obligations is not credit bid in connection with the Auction, such amount shall constitute a general unsecured claim against the Debtors' estates.</p>
<b>DSJL Mortgage</b>	<p>On the Closing Date, the obligations outstanding under that certain secured promissory note, dated as of August 17, 2018, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, among certain of the Debtors and DSJL Properties, LLC (the "<u>DSJL Mortgage</u>"), including approximately \$190,000 in principal amount outstanding, plus all interest, fees, expenses, costs, and other charges arising under or related to the DSJL Mortgage, shall be assumed by the Purchaser (or an affiliate thereof).</p>
<b>Westside Bank Mortgage</b>	<p>On the Closing Date, the obligations outstanding under that certain secured Business Loan Agreement, dated as of November 14, 2018, and the related security and mortgage documentation (each as may be as amended, restated, amended and restated, supplemented, or otherwise modified from time to time), among Jack</p>

	Cooper Holdings Corp. and Westside Bank, as lender, (" <u>Westside Bank Mortgage</u> "), including approximately \$1,644,000 in principal amount outstanding, plus all interest, fees, expenses, costs, and other charges arising under or related to Westside Bank Mortgage, shall be assumed by the Purchaser (or an affiliate thereof).
<b>Critical Vendors</b>	The Debtors shall treat certain holders of general unsecured claims as "critical vendors" pursuant to first-day orders of the Bankruptcy Court and first-day recognition orders of the CCA Court, subject to the terms of the DIP Credit Agreements.
<b><u>Union and Labor Matters</u></b>	
<b>Union Labor Matters</b>	<p>The Debtors shall obtain ratification of the CBAs<sup>3</sup> on terms and conditions acceptable to Solus and consistent with the term sheet attached hereto as <b><u>Exhibit 2</u></b> (as may be amended, supplemented, or modified, the "<u>CBA Term Sheet</u>") in all material respects.</p> <p>During the Agreement Effective Period (as defined in the RSA), the Debtors must obtain the consent of the Purchaser before assuming, renewing, extending the term of, or modifying any CBAs other than as described in the CBA Term Sheet.</p>
<b>Multiemployer Pension Plan Matters</b>	<p>The Debtors shall make no payments or contributions to any MEPPs after June 30, 2019 (other than, at the Debtors' option, pre-ratification vote contributions that become due to the local pension plans (which for the avoidance of doubt excludes the Central States Plan) as contemplated pursuant to the last sentence of Section VII.D. of the CBA Term Sheet), shall permanently cease to have an obligation to contribute to all MEPPs prior to the Closing Date, and shall terminate their participation in, and completely withdraw from all MEPPs prior to the Closing Date (a "<u>Withdrawal Event</u>"); <i>provided</i>, that, with respect to the Central States Plan, participation and contributions after the Closing Date, if any, shall be on terms and conditions described in a definitive agreement among the Company, the Purchaser, and the Central States Plan that is materially consistent as determined by Purchaser with the term sheet attached hereto as <b><u>Exhibit A</u></b> to <b><u>Exhibit 3</u></b> hereto (as may be amended, supplemented, or modified with the consent of the Purchaser, the "<u>CSPF Term Sheet</u>"), including the Special Contribution Obligation (as defined in the CSPF Term Sheet).</p> <p>The Sale Order shall provide that the Sale Transaction is "free and clear" of any and all withdrawal liabilities, including MEPP withdrawal liabilities crystallized by the Withdrawal Event and any mass withdrawal liability (including reallocation and/or redetermination liability).</p> <p>Additionally, on the Closing Date, the "Post-Restructuring Withdrawal Liability and "Investor Release" provisions of the CSPF Term Sheet, which shall be consistent in all respects with the terms of the CSPF Term Sheet, shall become effective.</p>
<b>Reservation of Rights With Respect to Union and Labor Matters</b>	In the event that the IBT, IAM, or representatives for the Central States Plan do not consent to the terms of the RSA or the Sale Transaction, the CBAs are not ratified by September 23, 2019, in each case consistent with this Term Sheet and the RSA, or the Company, the Central States Plan, and Purchaser do not enter into a definitive

<sup>3</sup> All reference to CBAs in this Term Sheet shall refer to the CBAs of the Debtors (excluding Canadian Debtors).

	agreement reflecting the terms of the CSPF Term Sheet by September 23, 2019, then each of the Debtors and Consenting Lenders reserves all rights to pursue all rights and remedies available to them, including but not limited to those existing under section 1113 of the Bankruptcy Code, which modifications would include, among other things, elimination of applicable successorship clause(s).
<b><u>Other Terms and Conditions</u></b>	
<b>Retention of Management</b>	The Executive Committee <sup>4</sup> of the Debtors as of the Petition Date shall assume the same roles as officers and members of the senior management team of the Purchaser. The Purchaser shall assume the Existing Employment Agreements (as modified as provided in the APA) on the Closing Date upon consummation of the Sale Transaction in accordance with the terms set forth in the RSA and the APA. For the avoidance of doubt, the Sale Transaction shall not constitute a “change of control” or similar transaction that causes acceleration of payments or benefits under the Existing Employment Agreements.
<b>Board of Directors</b>	The board of directors of the Purchaser (or such other body that will become the ultimate governing authority for the Purchaser) shall be selected in a manner determined by the Purchaser but shall, for the avoidance of doubt, include T. Michael Riggs.
<b>Releases</b>	The APA and the Sale Order shall contain full mutual general releases effective on the Closing Date between and among the Debtors, the Purchaser, the DIP Agents, the DIP Lenders, Wells, the Revolver Lenders, Cerberus, the First Lien Lenders, the 1.5 Lien Lenders, the Second Lien Lenders, Solus, the 1.5 Lien Agent, the Second Lien Agent, and such entities’ respective current and former affiliates, and such entities’ and their current and former affiliates’ current and former officers, managers, directors, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their current and former officers, managers, directors, equity holders, principals, members, employees, agents, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, for any claims up to the Closing Date except as preserved in the APA and related documentation implementing the Sale Transaction other than claims to the extent conveyed to (and released by) Purchaser. The terms of the Sale Order or other definitive documentation implementing the releases set forth herein shall be acceptable to each of the Debtors, the Purchaser and the Required Consenting Lenders.
<b>Milestones</b>	The Restructuring shall be implemented in accordance with the following milestones (the “ <u>Milestones</u> ”), each of which shall be subject to extension by mutual agreement between the Purchaser and the Debtors; <i>provided</i> , that the Milestones, as applicable, set forth in clause 5-8 and 10-12 hereof may be extended by the Debtors up to five (5) calendar days if the purpose of such extension is

<sup>4</sup> “Executive Committee” means T. Michael Riggs (CEO), Sarah Amico (Executive Chairperson), Theo Ciupitu (EVP, General Counsel, and Chief Risk Officer), Greg May (CFO), Katie Helton (EVP, Associate General Counsel, and Chief Human Resources Officer), Jeff Herr (President of Logistics), Kirk Hay (CIO) and Alex Meza (President of Transport).

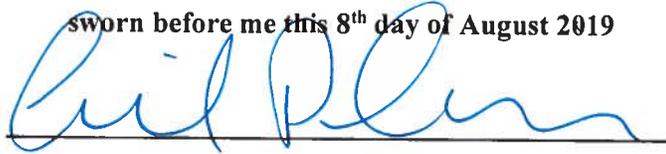
solely to accommodate scheduling with the Bankruptcy Court or CCAA Court, as applicable. The Debtors agree that they shall:

1. commence their Chapter 11 Cases no later than August 6, 2019 (the "Petition Date");
2. no later than the Petition Date, file the DIP Motion and Sale and Bidding Procedures Motion;
3. the Debtors and the Teamsters National Automobile Transport Industry Negotiating Committee (the "TNATINC") shall have negotiated the modifications to the CBA that are reflected in the CBA Term Sheet, and no later than the Petition Date, the TNATINC has agreed to submit the modifications set forth in CBA Term Sheet to the IBT membership for ratification;
4. no later than August 7, 2019, the Debtors, the Purchaser, and the Central States Plan shall execute the Pension Plan Treatment Agreement attached hereto as Exhibit 3 (together with all exhibits, schedules and attachments thereto, as each may be amended, supplemented, or otherwise modified from time to time) by and among the Debtors, the Central States Plan, and the Purchaser consistent with the CSPF Term Sheet, binding the Central States Plan, the Purchaser, and the Debtors to effectuate the terms and transactions contemplated by the CSPF Term Sheet;
5. obtain entry by the Bankruptcy Court of the Interim DIP Order no later than two (2) Business Days after the Petition Date;
6. obtain entry of an order by the CCAA Court recognizing the DIP Order (the "Interim DIP Recognition Order") no later than five (5) calendar days after the entry of the Interim DIP Order;
7. obtain entry by the Bankruptcy Court of the Final DIP Order and the Bidding Procedures Order as soon as reasonably practicable but in no event later than twenty-five (25) calendar days after the Petition Date;
8. obtain entry of an order by the CCAA Court recognizing the Final DIP Order (the "Final DIP Recognition Order") and the Bidding Procedures Order (the "Bidding Procedures Recognition Order") as soon as reasonably practicable but in no event later than five (5) calendar days after the entry of the Final DIP Order and the Bidding Procedures Order;
9. obtain ratification of the CBAs consistent with the CBA Term Sheet, this Term Sheet, the CSPF Term Sheet, and the RSA, no later than September 23, 2019, *provided* however and for the avoidance of doubt that any deviations between the CBAs and this Term Sheet, the CBA Term Sheet, the CSPF Term Sheet, or the RSA, or any new provisions in the CBAs not contemplated by this Term Sheet, the CBA Term Sheet, the CSPF Term Sheet, or the RSA, shall be subject to the consent of the Purchaser;
10. obtain entry by the Bankruptcy Court of an order approving the definitive documentation with the Central States Plan, including the Hybrid Plan Participation Agreement, no later than September 23, 2019;
11. obtain entry by the Bankruptcy Court of the Sale Order no later than sixty-five (65) calendar days after the Petition Date;

	<p>12. obtain entry of an order by the CCAA Court recognizing the Sale Order (the “<u>Sale Recognition Order</u>”) no later than five (5) calendar days after the entry of the Sale Order; and</p> <p>13. cause the Closing Date to occur no later than seventy-five (75) calendar days after the Petition Date.</p>
<p><b>Conditions Precedent</b></p>	<p>The occurrence of the Closing Date shall be subject to the satisfaction of certain conditions precedent, including, without limitation, the following (each of which may be waived by the mutual agreement of the Debtors and the Purchaser):</p> <ol style="list-style-type: none"> <li>1. the RSA shall not have been terminated and shall remain in full force and effect;</li> <li>2. ratification of CBAs consistent with CBA Term Sheet, but in any case in form and substance acceptable to the Purchaser;</li> <li>3. if the CBAs require participation in the Central States Plan, entry by the Purchaser into a definitive and binding agreement with the Central States Plan consistent with the CSPF Term Sheet, but in any case in form and substance acceptable to the Purchaser in its sole and absolute discretion;</li> <li>4. there shall be no proceeding before any governmental entity pending or threatened in any jurisdiction wherein an unfavorable order could prevent or adversely affect the consummation of the Closing Date or the operation of the business and ownership of the transferred assets thereafter, result in any of the transactions related to the Sale Transaction being declared unlawful or rescinded, require the Purchaser or any affiliate thereof to pay any damages or penalty as a result thereof or have any obligation or liability in connection therewith, or have a material adverse effect, and no such order shall be in effect;</li> <li>5. the final version of the APA and all of the schedules, documents, and exhibits contained therein, shall be consistent with this Term Sheet (including all attachments hereto) and the RSA in all material respects, shall be satisfactory to the Purchaser, and shall have been filed in a manner consistent with the RSA;</li> <li>6. The Final DIP Order shall have been entered by the Bankruptcy Court, the Final DIP Order and the DIP Credit Agreements shall be in full force and effect in accordance with its terms, and no event of termination under the Final DIP Order or event of default under the DIP Credit Agreements shall be continuing;</li> <li>7. the Bankruptcy Court shall have entered the Sale Order, in form and substance acceptable to the Debtors, the Purchaser, and the Required Consenting Lenders;</li> <li>8. Each of the Interim DIP Recognition Order, the Final DIP Recognition Order, the Bidding Procedures Recognition Order and the Sale Recognition Order shall have been entered by the CCAA Court;</li> <li>9. on the Closing Date, there shall not have occurred since the Petition Date a fact, event, or circumstance that has, or could reasonably be expected to have, a material adverse effect on the Debtors taken as a whole, excluding the effects of the commencement of the Chapter 11 Cases and the CCAA Proceeding;</li> </ol>

	<p>10. all requisite governmental authorities and third parties shall have approved or consented to the consummation of the Sale Transaction, to the extent required;</p> <p>11. the Debtors shall have implemented the Sale Transaction in a manner consistent in all material respects with this Term Sheet (including all appendices hereto), and the RSA;</p> <p>12. each Definitive Document, including all Exit Financing Documents, shall be executed and delivered; and</p> <p>13. satisfaction of any other conditions as may be set forth in the APA.</p>
<b>Review of Bankruptcy Pleadings</b>	The Debtors shall deliver copies of all pleadings and materials to be filed in the Bankruptcy Court and CCAA Court to K&E and Bennett Jones, as counsel for the Purchaser, and Schulte, as counsel for Cerberus, no less than three (3) calendar days (or as soon as is reasonably practicable under the circumstances) prior to the date that Debtors' counsel intends to file such pleading.
<b>Due Diligence</b>	The Debtors shall provide Solus and its advisors with access to the Debtors' books and records, key officers and employees, offices, and assets during reasonable business hours so that Solus may complete its due diligence. The Disclosure Schedules (as defined in the APA), in form and substance acceptable to the Purchaser, shall be completed by the date that is three (3) Business Days prior to the hearing on the Bidding Procedures Order, subject to the terms of the APA.
<b>Restructuring Transactions</b>	The Sale Order shall be deemed to authorize, among other things, all actions as may be necessary or appropriate, consistent with this Term Sheet (including all appendices hereto) and the RSA, to effect any transaction described in, contemplated by, or necessary to effectuate the Restructuring.
<b>Tax Cooperation</b>	The Debtors and the Purchaser agree to cooperate in good faith to structure the Restructuring and related transactions in a tax efficient manner as set forth in the APA.
<b>Documentation</b>	The RSA Parties shall negotiate the APA, the DIP Facilities and the Exit Facilities, as applicable, and related definitive documents in good faith. Any and all documentation necessary to effectuate the Restructuring shall be in form and substance consistent with this Term Sheet (including all appendices hereto) and the RSA, and otherwise satisfactory to the Debtors, the Purchaser, and, with respect to any document involving treatment of or directly or indirectly affecting the First Lien Term Loan Facility and/or the Exit First Lien Term Loan Facility, Cerberus.

**This is Exhibit "E" to the Affidavit of Greg R. May  
sworn before me this 8<sup>th</sup> day of August 2019**

A handwritten signature in blue ink, appearing to read "Neil Plun", written over a horizontal line.

A Commissioner for Oaths/Notary Public in and for the Province of Alberta

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF JACK COOPER VENTURES, INC., JACK COOPER  
DIVERSIFIED, LLC, JACK COOPER ENTERPRISES, INC., JACK COOPER  
HOLDINGS CORP., JACK COOPER TRANSPORT COMPANY, INC., AUTO  
HANDLING CORPORATION, CTEMS, LLC, JACK COOPER LOGISTICS, LLC,  
AUTO & BOAT RELOCATION SERVICES, LLC, AXIS LOGISTIC SERVICES,  
INC., JACK COOPER CT SERVICES, INC., JACK COOPER RAIL AND  
SHUTTLE, INC., JACK COOPER INVESTMENTS, INC., NORTH AMERICAN  
AUTO TRANSPORTATION CORP., JACK COOPER TRANSPORT CANADA  
INC., JACK COOPER CANADA GP 1 INC., JACK COOPER CANADA GP 2 INC.,  
JACK COOPER CANADA 1 LIMITED PARTNERSHIP, JACK COOPER CANADA  
2 LIMITED PARTNERSHIP

APPLICATION OF JACK COOPER VENTURES, INC. UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS  
AMENDED

**Applicant**

**CONSENT**

**ALVAREZ & MARSAL CANADA INC.** HEREBY CONSENTS to act as Information  
Officer in the within proceedings.

Dated at Toronto, Ontario this 5<sup>th</sup> day of August, 2019.

**ALVAREZ & MARSAL CANADA INC.**

Per:

  
\_\_\_\_\_

Alan J. Hutchens

Senior Vice-President